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BILL 1

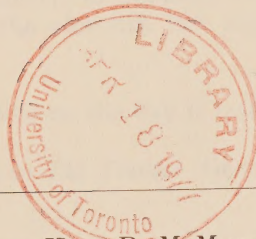
Government Bill

Government
Publications

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Legislative Assembly

An Act to amend The Trustee Act



THE HON. R. MCMURTRY
Attorney General

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The amendment corrects a typographical error in the provision for appointment of a new trustee to fill a vacancy.

BILL 1

1977

An Act to amend The Trustee Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 1 of section 3 of *The Trustee Act*, being chapter 470 of the Revised Statutes of Ontario, 1970, is amended by striking out "be" in the eleventh line and inserting in lieu thereof "by". s. 3 (1),
amended
2. This Act comes into force on the day it receives Royal Assent. Commence-
ment
3. This Act may be cited as *The Trustee Amendment Act, 1977*. Short title

Bill 1

An Act to amend
The Trustee Act

1st Reading

March 29th, 1977

2nd Reading

3rd Reading

THE HON. R. MCMURTRY
Attorney General

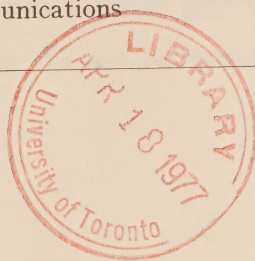
(Government Bill)

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publications

An Act to amend The Highway Traffic Act

THE HON. J. W. SNOW
Minister of Transportation and Communications



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The amendment changes the date until which Part VI of the Act applies from the 31st day of March, 1977, to the 31st day of March, 1978.

Part VI of the Act deals with the weight and size of vehicles permitted to operate on the highway without special permit.

Section 81 (1) of the Act provides that a vehicle or a combination of vehicles may operate on a highway in accordance with either the provisions of Part VII and sections 65, 68, 69 and 70 or the provisions of Part VI.

BILL 2

1977

An Act to amend The Highway Traffic Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 of section 81 of *The Highway Traffic Act*, being ^{s. 81 (2),} chapter 202 of the Revised Statutes of Ontario, 1970, as ^{re-enacted} amended by the Statutes of Ontario, 1975 (2nd Session), chapter 6, section 9, is repealed and the following substituted therefor:

(2) A vehicle or combination of vehicles may be operated in accordance with and subject to the provisions of Part VI ^{Part VI} only until and including the 31st day of March, 1978. ^{not to apply after March 31st, 1978}
2. This Act comes into force on the day it receives Royal Assent. <sup>Commence-
ment</sup>
3. This Act may be cited as *The Highway Traffic Amendment Act, 1977*. ^{Short title}

An Act to amend
The Highway Traffic Act

1st Reading

March 29th, 1977

2nd Reading

3rd Reading

THE HON. J. W. SNOW
Minister of Transportation
and Communications

(Government Bill)

BILL 2

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publications

An Act to amend The Highway Traffic Act

THE HON. J. W. SNOW
Minister of Transportation and Communications

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

BILL 2

1977

An Act to amend The Highway Traffic Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 of section 81 of *The Highway Traffic Act*, being ^{s. 81 (2),} chapter 202 of the Revised Statutes of Ontario, 1970, as ^{re-enacted} amended by the Statutes of Ontario, 1975 (2nd Session), chapter 6, section 9, is repealed and the following substituted therefor:

(2) A vehicle or combination of vehicles may be operated in accordance with and subject to the provisions of Part VI only until and including the 31st day of March, 1978. ^{Part VI not to apply after March 31st, 1978}
2. This Act comes into force on the day it receives Royal Assent. ^{Commencement}
3. This Act may be cited as *The Highway Traffic Amendment Act, 1977*. ^{Short title}

An Act to amend
The Highway Traffic Act

1st Reading

March 29th, 1977

2nd Reading

March 31st, 1977

3rd Reading

March 31st, 1977

THE HON. J. W. SNOW
Minister of Transportation
and Communications

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publications

**An Act respecting the Withholding or Withdrawal of
Treatment where Death is Inevitable**

MR. MAECK



EXPLANATORY NOTE

The purpose of this Bill is to provide a means whereby an individual may limit the effect of a general or implied consent to medical treatment to prevent the use of life-sustaining procedures while in a terminal condition.

The Bill is designed to achieve this purpose by permitting an individual to execute a direction limiting his consent. Once a physician or hospital employee has notice of this direction, there is no defence of consent as a basis to avoid civil liability if the patient is treated with life-sustaining procedures during a period of terminal condition.

BILL 3

1977

**An Act respecting the Withholding
or Withdrawal of Treatment where
Death is Inevitable**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "attending physician" means a physician selected by or assigned to a patient and who has responsibility for the treatment and care of the patient;
- (b) "life-sustaining procedure" means a medical procedure or intervention that utilizes mechanical or artificial means to sustain, restore or supplant a vital function to postpone the moment of death, but does not include a medical procedure or intervention for the purpose of alleviating pain;
- (c) "physician" means a person licensed under Part III of *The Health Disciplines Act, 1974*;
- (d) "terminal condition" means an incurable condition caused by injury or disease by reason of which, in reasonable medical opinion, death is imminent and only postponed without improvement of the condition during the application of life-sustaining procedures.

1974, c. 47

2.—(1) Any person who has attained the age of majority, is mentally competent to consent, is able to make a free and informed decision and has, or is deemed to have, consented to medical treatment may, in writing in Form 1 signed by him, direct that the consent does not extend to the application of life-sustaining procedures during a terminal condition.

Direction
limiting
consent

Witnesses
of
direction

(2) A direction under subsection 1 is not valid unless the signature is witnessed by two persons neither of whom is a relative or an attending physician or other person engaged in the health care of the person giving the direction.

Benefi-
ciary of
estate as
witness

(3) No person who witnesses a direction under subsection 2 is entitled to any benefit from the estate of the person who gives the direction, except charges or directions for payments of debts.

Duration

(4) A direction is valid for five years from the date of its signing unless revoked under section 3.

When
direction
effective

3.—(1) A direction under section 2 does not take effect unless it is given to the attending physician of the person giving the direction or, where the person is a patient in a health facility, is given to the attending physician or a person on the medical staff of or employed by the health facility.

Direction
included
in medical
records

(2) Upon a direction being given to one of the persons mentioned in subsection 1, the direction or a copy of it shall be included in the medical records of the person giving the direction.

Revocation

(3) Where the person signing a direction in any manner and without regard to mental competency indicates to one of the persons mentioned in subsection 1 an intention to revoke the direction or is pregnant, the direction is revoked and shall be removed immediately from the medical records and destroyed.

Direction
deemed
valid

(4) Notwithstanding subsection 1, a direction given thereunder by a person who had not attained the age of majority, was not mentally competent to consent, or was not able to make a free and informed decision, is valid for the purposes of this Act if the person who acted upon it had no reason to believe that the person who gave it had not attained the age of majority, was not mentally competent to consent, or was not able to make a free and informed decision, as the case may be.

Terminal
condition

4. Where doubt exists as to whether or not a terminal condition exists for the purposes of a direction,

(a) a terminal condition shall be deemed to exist where in the opinion of two physicians, each of whom has made a separate diagnosis in respect of the person giving the direction and neither of whom has any medical responsibility for that person, the terminal condition exists; and

- (b) a terminal condition shall be deemed not to exist where in the opinion of one physician whose opinion is sought for the purposes of clause *a* a terminal condition does not exist.

5. No action or other proceeding for damages lies against any person for any act done or omission made in good faith and without negligence in the observance or intended observance of a direction purporting to be given under this Act. ^{Civil liability}

6. Nothing in this Act shall be construed to impose an obligation to provide or perform a life-sustaining procedure where the obligation does not otherwise exist at law. ^{Other obligations not affected}

7.—(1) A death that occurs subsequent to the withholding or withdrawal of life-sustaining procedures pursuant to a direction signed under this Act shall not be deemed to be a suicide or self-induced death under any policy of insurance. ^{Insurance}

(2) A requirement that a person sign a direction as a condition for being insured for or receiving health care services is void. ^{Idem}

8. Subject to subsection 3 of section 3, every person who wilfully conceals, cancels, defaces or destroys the direction of another without that person's consent is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000 or to imprisonment for not more than thirty days, or to both. ^{Offence}

9. This Act comes into force on the day it receives Royal Assent. ^{Commencement}

10. This Act may be cited as *The Natural Death Act*, 1977. ^{Short title}

FORM 1

(The Natural Death Act, 1977)

DIRECTION TO ATTENDING PHYSICIAN AND MEDICAL STAFF

I,, being of sound mind, wilfully and voluntarily, direct that all life-sustaining procedures be withheld or withdrawn if at any time I should be in a terminal condition and where the application of life-sustaining procedures would serve only to artificially prolong the moment of death.

It is my intention that this direction be honoured by my family, physicians and medical staff as the final expression of my legal right to refuse medical or surgical treatment and to die naturally.

Made this day of (month, year)

.....
(signature)

The person signing this directive is personally known to me and I believe him/her to be of sound mind.

.....
(Witness)

.....
(Witness)

An Act respecting the Withholding or
Withdrawal of Treatment where Death
is Inevitable

1st Reading

March 29th, 1977

2nd Reading

3rd Reading

MR. MAECK

(Private Member's Bill)

BILL 4

Private Member's Bill

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publications

An Act to provide for Freedom of Information



MR. LAWLOR

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The purpose of this Bill is to provide members of the public with access to Government information. The Bill is designed to allow maximum accessibility to Government documents while, at the same time, recognizing that it is in the public interest that certain types of information not be disclosed. Where a disagreement arises as to whether or not certain information should be disclosed, the Bill provides a mechanism for resolving the dispute.

BILL 4

1977

An Act to provide for Freedom of Information

WHEREAS, for the furtherance of democratic principles Preamble
and practices in the Province of Ontario, it is right
and expedient that the fullest and most objective dis-
closure of government programs, policies, activities and
operations be openly declared and made available;

Therefore, Her Majesty, by and with the advice and
consent of the Legislative Assembly of the Province of
Ontario, enacts as follows:

1. In this Act,**Interpre-
tation**

- (a) "governmental organization" means the Executive Council, a ministry, commission, board or other administrative unit of the Government of Ontario, and includes any agency thereof;
- (b) "public document" means any document, record, book, paper, report, order, decision, map photograph, film, card, tape, recording, minutes, statistical compilation or part thereof of form or character prepared or received by a governmental organization as a result of the spending of public moneys, and includes,
 - (i) final opinions, including concurring and dissenting opinions made in the adjudication of cases,
 - (ii) statements of policy and interpretations of policy,
 - (iii) administrative staff manuals and instructions of staff which affect members of the public,
 - (iv) any account, voucher, tender or contract dealing with receipt or expenditure of public funds.

Public access
to documents

2. Subject to section 3, any person may request in writing from a governmental organization any public document or, where the request reasonably identifies a subject-matter, a list of public documents affecting the subject-matter and, upon receiving the request, the governmental organization shall make available as soon as possible such document or list of documents for examination or copying.

Exceptions

3.—(1) The following public documents are exempt from the provisions of section 2:

1. Documents, the release of which would be detrimental to the security of Ontario or Canada.
2. Documents in respect of international relations, the release of which would be detrimental to the conduct of Canada's foreign relations or Ontario's relations with other countries.
3. Documents, the release of which would be detrimental to the conduct of federal-provincial relations or the relations of the provinces with one another.
4. Documents, the release of which would constitute a clearly unwarranted invasion of personal privacy.
5. Documents relating to negotiations leading up to a contract unless the contract has been executed or the negotiations have been concluded.
6. Documents relating to policy decisions under consideration but not yet finalized.
7. Documents relating to an investigation or inquiry in the administration of justice, but does not include legal opinions or advice prepared or received by a governmental organization unless the document containing the legal opinion or advice is expressly designated as privileged by the Executive Council or the Attorney General.
8. Documents that are excluded from disclosure by statute.
9. Minutes of the Executive Council and its committees.
10. Any proceedings before a court of justice or a judicial inquiry.

11. Any matter which may be exempted by the regulations.

(2) Any regulation made under this Act exempting a public document from disclosure does not have effect until it has been referred to the Standing Committee on Regulations and reported by the Committee to the Legislative Assembly.

4.—(1) Where a person makes a request under section 2 and receives no response from the governmental organization within a reasonable time or, for any reason, considers the response inadequate, the person may apply to the Ombudsman, under *The Ombudsman Act, 1975*, for a review. ^{Application to Ombudsman} 1975, c. 42

(2) The provisions of *The Ombudsman Act, 1975* in respect of the investigation of complaints apply to an application under this section *mutatis mutandis*. ^{Idem}

(3) Where the Ombudsman is of the opinion that it is in the public interest that a document be released, a list produced or further disclosure provided, in addition to his powers under *The Ombudsman Act, 1975*, the Ombudsman may direct the governmental organization to make such compliance with the request as he thinks fit. ^{Direction by the Ombudsman}

5.—(1) After a decision is made by the Ombudsman under section 4, the person making the request or the governmental organization to which the request is addressed may apply to a judge of the High Court for an order determining whether or not a public document, list or further disclosure should be provided. ^{Application to judge}

(2) Where a governmental organization claims an exemption under section 3, it may file a statement of particulars in a sealed envelope with the court in support of its claim. ^{Sealed statement of particulars}

(3) At any stage in the proceedings, the judge may order that the statement of particulars be resealed or disclosed in whole or in part to the other party or otherwise dealt with as he thinks fit. ^{Idem}

6. In any proceeding before the Ombudsman or a court under this Act, the Crown shall pay all of the costs of a person making a request under section 2, unless, in the opinion of the Ombudsman or the court, the request is made for a frivolous or vexatious purpose. ^{Costs}

Release of
documents by
Lieutenant
Governor
in Council

7. Notwithstanding section 3, the Lieutenant Governor in Council may order the release of a public document which is exempt where the release of the document is in the public interest.

Regulations

8. The Lieutenant Governor in Council may make regulations,

- (a) exempting any document or class of document from the application of the Act;
- (b) prescribing the times and places at which public documents are available for examination or copying;
- (c) prescribing the terms and conditions under which public documents or lists of public documents are released;
- (d) prescribing the costs to be paid for the release or copying of a public document;
- (e) prescribing forms and providing for their use;
- (f) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

Commence-
ment

9. This Act comes into force on the day it receives Royal Assent.

Short title

10. This Act may be cited as *The Freedom of Information Act, 1977*.

An Act to provide for
Freedom of Information

1st Reading

March 29th, 1977

2nd Reading

3rd Reading

MR. LAWLOR

(Private Member's Bill)

BILL 5

Private Member's Bill

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publications

**An Act to amend
The Proceedings Against the Crown Act**



MR. KENNEDY

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The purpose of this Bill is to clarify the law with respect to the right to garnishee the wages of a Crown employee who is employed by a Crown agency and whose salary or wages are not paid from the Consolidated Revenue Fund by providing that a Crown agency is subject to garnishment proceedings.

BILL 5

1977

**An Act to amend
The Proceedings Against the Crown Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Proceedings Against the Crown Act*, being chapter 365 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following section:

25a. Notwithstanding section 25, a Crown agency is subject to garnishment proceedings where the payment of salary or wages is not made from the Consolidated Revenue Fund.

s. 25a,
enacted

Crown
agency
may be
garnishee

2. This Act comes into force on the day it receives Royal Assent.
 3. This Act may be cited as *The Proceedings Against the Crown Amendment Act, 1977*.
- Commence-
ment
- Short title

An Act to amend
The Proceedings Against the
Crown Act

1st Reading

March 31st, 1977

2nd Reading

3rd Reading

MR. KENNEDY

(Private Member's Bill)

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4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**An Act to reform the Law respecting
Property Rights and Support Obligations between
Married Persons and in other Family Relationships**

THE HON. R. MCMURTRY
Attorney General



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTES

SECTION 1. The definition of "child" allows children born outside marriage and persons treated as a child of the family to claim support from their parents under Part II or to benefit from an order respecting property under section 5 (1) (d).

The definition of "court" permits claims under Parts I to IV to be brought in the new Unified Family Court, a provincial court (family division), a county or district court or the Supreme Court.

The definition of "parent" corresponds with the meaning of "child".

The definition of "spouse" ensures that parties to a marriage subsequently found to be void are covered by this Act.

BILL 6

1977

**An Act to reform the Law respecting
Property Rights and Support Obligations
between Married Persons and in other
Family Relationships**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "child" means a child born within or outside marriage, subject to sections 83 and 85 of *The Child Welfare Act* (which relate to the effect of adoption), and includes a person whom the parent has demonstrated a settled intention to treat as a child of his or her family, but does not include a child placed in a foster home for consideration by a person having lawful custody; R.S.O. 1970,
c. 64
- (b) "court" means a provincial court (family division), the Unified Family Court, a county or district court or the Supreme Court;
- (c) "domestic contract" means a domestic contract as defined in Part IV;
- (d) "parent" means the father or mother of a child, and includes a person who has demonstrated a settled intention to treat a child as a child of his or her family, but does not include a person in whose home a child was placed as a foster child for consideration by a person having lawful custody;
- (e) "spouse" means either of a man and woman who,
 - (i) are married to each other,
 - (ii) are married to each other by a marriage that is voidable and has not been voided by a judgment of nullity,

- (iii) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or have cohabited within the preceding six months.

Combining of
application

2.—(1) Where, in an application under any provision of this Act, it appears to the court that for the appropriate determination of the affairs of the spouses it is necessary or desirable to have other matters first or simultaneously determined, the court may direct that the application stand over until such other applications are brought or determined as the court considers appropriate.

All
proceedings
in one court

(2) Except as otherwise provided, where an application is made to a court under this Act, no person who is a party to the proceeding shall make an application under this Act to any other court, but the court may order that the proceedings be transferred to a court having other jurisdiction where, in the opinion of the court, the court having other jurisdiction is more appropriate to determine the matters in issue that should be determined at the same time.

Applications

(3) An application under this Act may be made in the manner prescribed by the rules of the court or in another proceeding.

Capacity
of minors

(4) A minor who is a spouse has capacity to commence, conduct and defend a proceeding under this Act without the intervention of a next friend or guardian *ad litem*.

Extension
of times

(5) The court may extend the time for bringing an application under this Act where the court is satisfied that,

- (a) there are *prima facie* grounds for relief;
- (b) the delay has been incurred in good faith and has resulted from circumstances not reasonably within the control of the applicant; and
- (c) no substantial prejudice or hardship will result to any person affected by reason of the delay.

Closed
hearings

(6) The court may exclude the public from a hearing, or any part thereof, where, in the opinion of the presiding judge, the desirability of protecting against the consequences of possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public and the court may by order prohibit the publication of any matter connected with the application or given in evidence at the hearing.

SECTION 2. Subsection 1 permits a court to adjourn the hearing of a claim under this Act where it finds that all of the issues necessary for it to make a proper decision have not been determined. For example, an application to divide property could be adjourned to allow the bringing of a support application, and the two applications could be heard together.

Subsection 2 requires all claims under this Act between the same parties to be brought in the same court, and allows the transfer of an application to another court if the first court does not have jurisdiction to deal with all the issues.

Subsection 5 allows a court to permit an application after the time period prescribed by the Act expires.

Subsection 7 allows the court to make orders on the consent of the parties, without the need for a hearing.

Subsection 9 provides that a domestic contract (marriage contract, cohabitation agreement or separation agreement) made under Part IV prevails over the provisions of Parts I to III, subject to the limitation of sections 17 (3) and 55.

SECTION 3. The provincial court (family division) does not have jurisdiction under this Part.

The definition of "family assets" includes property held for the benefit of a spouse by a corporation, trust, power of appointment or revocable gift. The definition does not include land around the matrimonial home where that land is used for farming or other business purposes and is not reasonably necessary to the use of the home as a residence. The definition also excludes any property specified in a domestic contract as not being a family asset.

(7) Upon the consent of the parties in an application under this Act, the court may make any order that the court is otherwise empowered to make by this Act. Consent orders

(8) Any matter provided for in a domestic contract may be incorporated in an order made under this Act. Incorporation of contract in order

(9) Where a domestic contract makes provision in respect of a matter that is provided for in this Act, the contract prevails except as otherwise provided in this Act. Act subject to contracts

PART I

FAMILY PROPERTY

3. In this Part, Interpretation

- (a) “court” means a court as defined in section 1 but does not include a provincial court (family division);
- (b) “family assets” means a matrimonial home as determined under Part III and property owned by one spouse or both spouses and ordinarily used or enjoyed by both spouses or one or more of their children while the spouses are residing together for shelter or transportation or for household, educational, recreational, social or aesthetic purposes, and includes,
 - (i) money in an account with a chartered bank, savings office, credit union or trust company where the account is ordinarily used for shelter or transportation or for household, educational, recreational, social or aesthetic purposes,
 - (ii) where property owned by a corporation or trustee would, if it were owned by a spouse, be a family asset, shares in the corporation or an interest in the trust owned by the spouse having a market value equal to the value of the benefit enjoyed by the spouse in respect of the property,
 - (iii) property over which a spouse has, either alone or in conjunction with another person, a power of appointment exercisable in favour of himself or herself, if the property would be a family asset if it were owned by the spouse, and
 - (iv) property disposed of by a spouse but over which the spouse has, either alone or in conjunction with another person, a power to

revoke the disposition or a power to consume, invoke or dispose of the property, if the property would be a family asset if it were owned by the spouse,

but does not include property that the spouses have agreed by a domestic contract is not to be included in the family assets;

- (c) "property" means real or personal property or any interest therein.

Division of
family
assets

4.—(1) Subject to subsection 3, where a decree *nisi* of divorce is pronounced or a marriage is declared a nullity or where the spouses are separated and there is no reasonable prospect of the resumption of cohabitation, each spouse is entitled to have the family assets divided in equal shares notwithstanding the ownership of the assets by the spouses as determinable for other purposes and notwithstanding any order under section 6.

Application
to court

(2) The court may, upon the application of a person who is the spouse of another, determine any matter respecting the division of family assets between them.

Variation
of division

(3) The court may make a division of family assets resulting in shares that are not equal where the court is of the opinion that a division of the family assets in equal shares would be inequitable, having regard to,

- (a) the duration of the period of cohabitation under the marriage;
- (b) the date when the property was acquired;
- (c) the extent to which property was acquired by one spouse by inheritance or by gift; or
- (d) any other circumstance relating to the acquisition, disposition, preservation, maintenance, improvement or use of property rendering it inequitable for the division of family assets to be in equal shares.

Property
other than
family
assets

(4) Where, in the opinion of the court, a spouse has unreasonably impoverished the family assets or the result of a division of the family assets would be inequitable in all the circumstances having regard to the considerations set out in clauses *a* to *d* of subsection 3, the court may make a division of any property that is not a family asset.

SECTION 4. This section gives a spouse the right to have the family assets divided where the marriage has broken down. The division can be accomplished by agreement or by court order. The family assets will be divided equally notwithstanding which spouse is the owner of them, even though that ownership has been determined under section 6, unless one of the spouses can satisfy the court that an equal division of family assets would be inequitable in view of the enumerated factors. Once satisfied, the court can divide the family assets unequally or divide other property of the spouse, including business property. The underlying purpose of the section is set out in subsection 5.

SECTION 5. Subsection 1 allows an application to court to determine the mechanics of the division of the family assets or other property subject to division. The powers of the court include the power to order partition or sale. Recourse to *The Partition Act* will be unnecessary.

SECTION 6. This section is based on and replaces section 12 of *The Married Women's Property Act*. It allows applications to determine ownership or the right to possession of particular pieces of property, and is not restricted to a marriage breakdown situation. This section is not available where an application under section 4 has been made in respect of the same property. The court may order compensation for a spouse if the other has disposed of the property in question. The court has the power to order partition, so that recourse to *The Partition Act* will not be necessary.

(5) The purpose of this section is to recognize that inherent ^{Purpose} in the marital relationship there is mutual contribution by the spouses, whether financial or otherwise, to the family welfare, entitling each spouse to an equal division of the family assets upon termination of the marriage, subject to the equitable considerations set out in subsections 3 and 4.

5.—(1) In an application under section 4, the court may ^{Idem} order,

- (a) that the title to any specified property directed to a spouse in the division be transferred to or in trust for or vested in the spouse whether absolutely, for life or for a term of years;
- (b) the partition or sale of any property;
- (c) that payment be made out of the proceeds of sale to one or both spouses, and the amount thereof;
- (d) that any property forming part of the share of either or both spouses be transferred to or in trust for or vested in a child to whom a spouse owes an obligation to provide support;
- (e) that either or both spouses give security for the performance of any obligation imposed by the order, including a charge on property; and
- (f) that either spouse pay to the other such sum as is set out in the order for the purpose of adjusting the division,

and may make such other orders or directions as are ancillary thereto.

(2) In or pending an application under section 4, the court may make such interim order as it considers necessary ^{Interim orders for preservation and possession} for restraining the dissipation of family assets and for the possession, delivering up, safekeeping and preservation of the property.

6. Any person may apply to the court for the determination of any question between that person and his or her spouse or former spouse as to the ownership or right to possession of any particular property, except where an application or an order has been made respecting the property under section 4 or 5, and the court may, ^{Determination of questions of title between married persons}

- (a) declare the ownership or right to possession;

- (b) where the property has been disposed of, order payment in compensation for the interest of either party;
- (c) order that the property be partitioned or sold for the purpose of realizing the interests therein; and
- (d) order that either or both spouses give security for the performance of any obligation imposed by the order, including a charge on property,

and may make such other orders or directions as are ancillary thereto.

Contribution
to property

7. Where one spouse or former spouse has contributed work, money or money's worth in respect of the acquisition, management, maintenance, operation or improvement of property, other than family assets, in which the other has or had an interest, upon application, the court may by order,

- (a) direct the payment of an amount in compensation therefor; or
- (b) award a share of the interest of the other spouse or former spouse in the property appropriate to the contribution,

and the court shall determine and assess the contribution without regard to the relationship of husband and wife or the fact that the acts constituting the contribution are those of a reasonable spouse of that sex in the circumstances. 1975, c. 41, s. 1 (3) (c), *amended*.

Interim
orders for
preservation

8. In an application under section 6 or 7, the court may make such interim order as it considers necessary for restraining the dissipation of the property and for the possession, delivering up, safekeeping and preservation of the property.

Registration
of orders

9. Where an order made under this Part affects real property, the order does not affect the acquisition of an interest in the real property by a person in good faith without notice of the order, unless the order is registered.

Presump-
tions

10. The rule of law applying a presumption of advancement in questions of the ownership of property as between husband and wife is abolished and in place thereof the rule of law applying a presumption of a resulting trust shall be applied in the same manner as if they were not married, except that,

SECTION 7. Is based on section 1 (3) (c) of *The Family Law Reform Act, 1975* and extends that provision so as to allow the court to recognize the spouse's contribution to particular property.

SECTION 10. This provision formerly appeared as section 1 (3) (d) of *The Family Law Reform Act, 1975*.

SECTION 11. This Part applies to persons married and to property owned when this Act comes into force, except where the spouses have already started a court proceeding over property rights.

SECTION 12. This Part will apply to spouses who do not have a marriage contract (see section 2 (9) and whose last common habitual residence was in Ontario or who never had a common habitual residence. Where the spouses' last common habitual residence was outside Ontario, the ownership of their movable property and their right to divide family assets will be governed by the law of that other jurisdiction.

The ownership of spouses' land is governed by the law of the place where the land is situated. Where this Part applies to the spouses, land outside Ontario cannot be ordered sold or partitioned by the court. However, the court can take the value of that land into account and give a smaller share of movable property or land in Ontario to the spouse who owns the foreign land, in order to adjust the division of family assets.

SECTION 13. The definition of "spouse" is broadened to include a person whose marriage has been annulled and a "common law" spouse as defined.

- (a) the fact that property is placed or taken in the name of spouses as joint tenants shall be *prima facie* proof that a joint tenancy of the beneficial interest in the property is intended; and
- (b) money on deposit in a bank, savings office, credit union or trust company in the name of both spouses shall be deemed to be in the name of the spouses as joint tenants for the purposes of clause a. 1975, c. 41, s. 1 (3) (d).

11. This Part applies notwithstanding that,

Application
of Part

- (a) the spouses entered into the marriage before this Part comes into force; or
- (b) the property in issue was acquired before this Part comes into force,

but does not apply in respect of property rights that are in issue in a proceeding that was commenced before this Part comes into force.

12.—(1) The division of family assets and the ownership as between spouses of movable property wherever situate are governed by the internal law of the place where both spouses had their last common habitual residence or, where there is no place where the spouses had a common habitual residence, by the law of Ontario.

Conflict
of laws

(2) The ownership of immovable property as between spouses is governed by the internal law of the place where the land is situated, but where the law of Ontario is applicable respecting the division of family assets, the value of the property may be taken into consideration for the purposes of section 4.

Idem

PART II

SUPPORT OBLIGATIONS

13. In this Part,

Interpre-
tation

- (a) “dependant” means a person to whom another has an obligation to provide support under this Part;
- (b) “spouse” means a spouse as defined in section 1, and includes,

(i) either of a man and woman not being married to each other who have cohabited,

1. continuously for a period of not less than five years, or
2. in a relationship of some permanence where there is a child born of whom they are the natural parents,

and have so cohabited within the preceding six months, and

(ii) either of a man and woman between whom an order for support has been made under this Part or an order for alimony or maintenance has been made before this Part comes into force.

Obligation
of spouses
for support

14. Every spouse has an obligation to provide support for himself or herself and for the other spouse, in accordance with need, to the extent that he or she is capable of doing so.

Obligation
of parent
to support
child

15. Every parent has an obligation, to the extent the parent is capable of doing so, to provide education and support, in accordance with need, for his or her child who is unmarried and,

(a) is under the age of sixteen years; or

(b) is of the age of sixteen years or over and in the charge of a parent but unable, by reason of illness, disability or other cause, to withdraw from the charge of his or her parents or to provide himself or herself with necessities.

Obligation
of child
to support
parent

16. Every child who is not a minor has an obligation to provide support, in accordance with need, for his or her parent who has cared for and provided support for the child, to the extent that the child is capable of doing so.

Order for
support

17.—(1) A court may, upon application, order a person to provide support for his or her dependants and determine the amount thereof.

Applicants

(2) An application for an order for support may be made by the dependant or on behalf of a dependant by,

(a) the Ministry of Community and Social Services in the name of the Minister;

SECTION 14. This section creates an obligation on spouses to be self-supporting and to support the other spouse, depending on ability to provide support and the needs of the other spouse. Matrimonial misconduct will no longer be the basis for making or denying an award of support, but see section 17 (5).

SECTION 15. The parental obligation to support a child is extended beyond the age of 16 years where the child is unable to provide himself with necessities of life because of illness, disability or other cause, which would include attendance at school or university, where reasonable. This wording is borrowed from the *Divorce Act* (Canada).

SECTION 16. A corresponding obligation is placed on children over the age of 18 to support their parents when in need, in accordance with ability. This section replaces the existing *Parents' Maintenance Act*, which imposes a similar obligation.

SECTION 17. A public agency providing welfare or family benefits or a children's aid society will be able to claim support for a dependant.

Subsection 4 contains a check-list to assist the court in determining the needs of the dependant and the ability to pay of the person from whom support is claimed. Persistent conduct constituting a repudiation of the family relationship will remain a factor in determining the amount of support which should be awarded. The court is directed to take into consideration any loss of earning capacity or opportunity for advancement occasioned by the responsibilities assumed during cohabitation and may make a special award to assist a spouse to attain financial independence.

- (b) a municipal corporation, including a metropolitan, district or regional municipality, but not including an area municipality thereof; or
- (c) a children's aid society,

where the Ministry, municipality or society is providing an allowance or benefit in respect of the support of the dependant.

(3) The court may set aside a provision for support in a domestic contract and may determine and order support under this section notwithstanding that the agreement contains an express provision excluding the application of this section, ^{Setting aside domestic contract}

- (a) where the provision for support or the waiver of the right to support results in circumstances that are unconscionable;
- (b) where the spouse qualifies for an allowance for support out of public money; or
- (c) where there has been default in the payment of support under the contract.

(4) In determining the amount, if any, of support in relation to need, the court shall consider all the circumstances of the parties, including, ^{Determination of amount}

- (a) the assets and means of the dependant and of the respondent;
- (b) the capacity of the dependant to provide for his or her own support;
- (c) the capacity of the respondent to provide support;
- (d) the age and the physical and mental health of the dependant and of the respondent;
- (e) the needs of the dependant, in determining which the court may have regard to the accustomed standard of living during cohabitation;
- (f) the desirability for the dependant to have special assistance to achieve a program for financial independence;
- (g) the legal obligation of the respondent to provide support for any other person;

- (*h*) a contribution by the dependant to the realization of the career potential of the respondent;
- (*i*) where the dependant is a child, his or her aptitude for and reasonable prospects of obtaining an education;
- (*j*) where the dependant is a child of the age of sixteen years or more, his or her withdrawal from parental control;
- (*k*) where the dependant is a spouse, the effect on his or her earning capacity of the responsibilities assumed during cohabitation; and
- (*l*) any other source of support for the dependant other than out of public money.

Conduct

(5) The liability for support exists without regard to the conduct of the spouse requiring the support, except for,

- (*a*) cohabitation by the spouse with another person after the spouses have ceased to cohabit; or
- (*b*) a course of conduct during cohabitation that is an obvious and gross repudiation of the relationship.

Powers of court

18.—(1) In an application under section 17, the court may order,

- (*a*) an amount payable periodically, whether annually or otherwise and whether for an indefinite or limited period, or until the happening of a specified event;
- (*b*) a lump sum to be paid or held in trust;
- (*c*) any specified property to be transferred to or in trust for or vested in the dependant, whether absolutely, for life or for a term of years;
- (*d*) any matter authorized to be ordered under clauses *a* to *d* of subsection 1 of section 45;
- (*e*) that all or any of the moneys payable under the order be paid into court or to any other appropriate person or agency for the benefit of the dependant;
- (*f*) the payment of support to be made in respect of any period before the date of the order;

SECTION 18. The court has broad powers to make the most suitable order or combination of orders regarding support, including the making of both periodic and lump sum orders and the granting of security to ensure payments. The court can also order the respondent to reimburse a public agency for payments it has made to the dependant. The court can provide for the dependant's support after the respondent's death.

If the order is not expressed to survive the respondent, it terminates on death and only 12 months arrears are enforceable.

A support order may be assigned to a public agency paying benefits to the dependant. This allows the agency to continue the steady income of the dependant and leaves the burden of enforcement and the risk of non-payment on the agency.

SECTION 19. To avoid having the issue of support before two different courts, an application under this Part lapses when a divorce is sought and any support order will be made under the *Divorce Act* (Canada). Where support is not before the trial judge as an issue in a divorce, an order under this Part survives the divorce. Under existing law, provincial orders in favour of a child continue but those in favour of a spouse do not.

SECTION 20. An order for support may be varied or ended if there has been a material change of circumstances or new evidence becomes available. The court also has power to wipe out arrears and interest.

If the original order was made by a county or district court, both the original court and another county or district court have jurisdiction to vary the order. The same provision is available for variation by one provincial court (family division) of an order made by another provincial court (family division).

This section applies to the variation of support orders made before this Act takes effect.

- (g) the payment to a public agency referred to in subsection 2 of section 17 of any amount in reimbursement for an allowance or benefit granted in respect of the support of the dependant, including an amount in reimbursement for an allowance paid or benefit provided before the date of the order;
- (h) the payment of expenses in respect of the pre-natal care and birth of a child;
- (i) that the obligation and liability for support continue after the death of the respondent and be a debt of his or her estate for such period as is fixed in the order; and
- (j) the securing of payment under the order, by a charge on property or otherwise.

(2) A provincial court (family division) shall not make an order under clause *b, c* or *j* of subsection 1 except for the provision of necessities or preventing the dependant from becoming a public charge. Limitation on jurisdiction of family court

(3) Where an application is made under section 17, the court may make such interim order as the court considers appropriate. Interim orders

(4) An order for support is assignable to a public agency referred to in subsection 2 of section 17. Assignment of support

(5) Unless an order to provide support otherwise provides, it terminates upon the death of the person having the obligation to provide support, and the liability for amounts under the order coming due and unpaid in the preceding twelve months is a debt of his or her estate. Termination of support order on death

19.—(1) Where an action for divorce is commenced, any application for support under this Part that has not been determined lapses. Effect of divorce proceedings

(2) Where a marriage is terminated by a decree absolute of divorce or declared a nullity and the question of support was not judicially determined in the divorce or nullity proceedings, an order for support made under this Part continues in force according to its terms. Idem

20.—(1) Where an order for support has been made and where the court is satisfied that there has been a material change in the circumstances of the dependant or the respondent or evidence has become available that was not available on the previous hearing, the court may, upon the application of any person named in the order or referred to in section 17, discharge, vary or suspend any Review and variation of orders

term of the order, prospectively or retroactively, relieve the respondent from the payment of part or all of the arrears or any interest due thereon and make such other order under section 18 as the court considers appropriate in the circumstances referred to in section 17.

Court

(2) An application under subsection 1 shall be made to the court that made the order or to a co-ordinate court in another part of Ontario.

Limitation
on appli-
cations for
review

(3) No application under subsection 1 shall be made within six months after the making of the order for support or the disposition of any other application under subsection 1 in respect of the same order, except by leave of the court.

Existing
orders

(4) This section applies to orders for maintenance or alimony made in a proceeding commenced before this section comes into force.

Restraining
orders

21. In or pending an application under section 17 or appearance to a notice under section 27, or where an order for support has been made, the court may make such interim or final order as it considers necessary for restraining the disposition or wasting of assets that would impair or defeat the claim or order for the payment of support.

Statement
of financial
affairs

22.—(1) Where an application is made under section 17 or a notice is issued under section 27, each party shall file with the court and serve upon the other a statement verified by oath or statutory declaration disclosing particulars of financial information in the manner and form prescribed by the rules of the court.

Order for
sealing
statement

(2) Where, in the opinion of the court, the public disclosure of any information required to be contained in a statement under subsection 1 would be a hardship on the person giving the statement, the court may order that the statement and any cross-examination upon it before the hearing be treated as confidential by the parties and not form part of the public record.

Absconding
respondent
or debtor

23. Where an application is made under section 17 or a notice is issued under section 27 and a judge of the court is satisfied that the respondent or debtor is about to leave Ontario, the judge may issue a warrant in the form prescribed by the rules of the court for the arrest of the respondent or debtor.

Provisional
orders

24.—(1) Where an application is made under section 17 or a notice is issued under section 27 in a provincial court (family division) and,

(a) the respondent in the application fails to appear;

SECTION 21. A proposed sale of assets which would defeat a claim or an order for payment of support may be restrained by court order.

SECTION 22. Disclosure of financial information will be required of both the applicant and the person from whom support is claimed in order to ascertain need and ability to pay. The court will have discretion to make the disclosure confidential.

SECTION 24. Where appropriate, a provincial court (family division) or the Unified Family Court can make a provisional order against a respondent who lives outside the judicial district and who fails to appear at the hearing. The order is sent to the court having jurisdiction where the respondent lives, and has no effect unless that court confirms it. This procedure is adapted from *The Deserted Wives' and Children's Maintenance Act*.

- (b) it appears to the court that the respondent resides in a locality in Ontario that is outside the territorial jurisdiction of the court; and
- (c) in the circumstances of the case, the court is of the opinion that the issues can be adequately determined by proceeding under this section,

the court may proceed in the absence of the respondent and without the statement of the financial affairs of the respondent required by section 22 and may make an order for support that is provisional only and the order has no effect until it is confirmed by the provincial court (family division) in the locality in which the respondent resides.

(2) Where a provisional order is made under subsection 1, the court making the order shall send to the court having jurisdiction in the locality in which the respondent resides copies of such documents and records, certified in such manner, as are prescribed by the rules of the court. Transmission for hearing

(3) The court to which the documents and records are sent under subsection 2 shall cause them to be served upon the respondent together with a notice to file with the court the statement of financial affairs required by section 22 and to appear and show cause why the provisional order should not be confirmed. Show cause

(4) At the hearing, the respondent may raise any defence that might have been raised in the original proceedings, but, if on appearing the respondent fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order without modification or with such modification as the court considers proper having regard to all the evidence. Confirmation of order

(5) Where the respondent appears before the court and satisfies the court that for the purpose of any defence or for the taking of further evidence or otherwise it is necessary to remit the case to the court that made the order, the court may so remit the case and adjourn the proceedings for that purpose. Adjournment for further evidence

(6) Where the respondent appears before the court and the court, having regard to all the evidence, is of the opinion that the order ought not to be confirmed, the court may remit the case to the court that made the order together with a statement of the reasons for so doing, and in that event the court that made the order may proceed in such manner as it considers proper. Where order not confirmed

(7) Where an order has been confirmed under this section, it may be varied or rescinded as if it were made originally Variation and rescission of order, remission of case, after confirmation

by the confirming court, and, where on an application for variation or rescission the court is satisfied that it is necessary to remit the case to the court that made the order for the purpose of taking further evidence, the court may so remit the case and adjourn the proceedings for that purpose.

Certificates
as
evidence

(8) A certificate certifying copies of documents or records for the purpose of this section and purporting to be signed by the clerk of the court is, without proof of the office or signature of the clerk, admissible in evidence in a court to which it is transmitted under this section as *prima facie* proof of the authenticity of the copy.

Right of
appeal

(9) No appeal lies from a provisional order made under this section, but, where an order is confirmed under this section, the person bound thereby has the same right of appeal as he would have had if the order had been made under section 18.

Unified
Family
Court

(10) For the purposes of this section, a reference to a provincial court (family division) includes the Unified Family Court.

Access to
records

25.—(1) Where it appears to a court that,

(a) for the purpose of bringing an application under this Part; or

(b) for the purpose of the enforcement of an order for support, custody or access,

the proposed applicant or person in whose favour the order is made has need to learn or confirm the whereabouts of the proposed respondent or person against whom the order is made, the court may order any person or public agency to provide the court with such particulars of the address as are contained in the records in its custody and the person or agency shall provide to the court such particulars as it is able to provide.

Section
binds Crown

(2) This section binds the Crown in right of Ontario.

Enforcement
of orders by
family court
clerk

26.—(1) The clerk of the Unified Family Court or of a provincial court (family division), upon the request of a person entitled to support under an order for support or maintenance enforceable in Ontario and upon the filing of such material as is prescribed by the rules may, on behalf of and in the name of such person, take such action to enforce the order as such person is entitled to take, notwithstanding that the order is an order of another court or that the other court is outside Ontario.

SECTION 25. In order to start a support application to enforce a support order, the applicant may obtain an order requiring a person such as an employer or public agency, including the Province of Ontario, to provide access to its records for the sole purpose of obtaining the address of a person ordered to pay support.

SECTION 26. This action allows support orders made in any court to be filed for enforcement in the new Unified Family Court or the provincial court (family division). It replaces section 25 of *The Provincial Courts Act*. This section recognizes the administrative practice whereby court officials automatically enforce orders in family court.

The provincial court (family division) will have power to enforce support orders by execution and garnishment. Formerly support orders were enforceable in small claims court only up to the monetary jurisdiction of that court.

The procedure for seizing wages of an Ontario government employee is made available for support orders.

SECTION 27. Where a debtor under an order defaults, the debtor can be required to appear before the court to explain the default and the debtor's finances can be inquired into. The debtor can be arrested if about to abscond. This procedure is adapted from *The Deserted Wives' and Children's Maintenance Act*.

SECTION 28. This procedure exists under *The Deserted Wives' and Children's Maintenance Act*. The power to imprison is made flexible enough to allow for a conditional or intermittent sentence.

SECTION 29. This section is new. It allows a court order for a continuing deduction at source by the employer in order to satisfy a support order. The attachment would have priority over any other seizure of wages. See also section 76.

(2) A provincial court (family division) and the judges thereof have the power to issue execution and garnishment and enforce orders under subsection 1 in the same manner as small claims courts and the judges thereof, but without monetary limitation. Powers of court for enforcement

(3) A person to whom an amount is owing or accruing under an order for support or maintenance payable by a Crown employee whose salary or wages are paid out of the Consolidated Revenue Fund is entitled to have the amount deducted from the salary or wages under section 26 of *The Public Service Act*. Payments by Crown employee

R.S.O. 1970,
c. 386

27.—(1) Where there is default in payment under an order for support or maintenance, a clerk of the Unified Family Court or a provincial court (family division) may issue a notice requiring the debtor to file a statement of financial information referred to in section 22 and appear before that court to explain the default and submit to an examination as to his assets and means. Examination of debtor

(2) If the debtor fails to appear as required after being served with a notice, or if the court is satisfied that the debtor cannot be served or intends to leave Ontario without appearing as required after being served, the court giving the notice may issue a warrant for the arrest of the debtor for the purpose of compelling attendance. Compelling attendance

28.—(1) Where the debtor fails to satisfy the court that the default is owing to his inability to pay, the court may order imprisonment for a term of not more than three months. Penalty for default

(2) The order for imprisonment under subsection 1 may be made conditional upon default in the performance of a condition set out in the order and the order for imprisonment may provide for the imprisonment to be served intermittently. Conditions of sentence

29.—(1) Where the court considers it appropriate in a proceeding under section 27, the court may make an attachment order directing the employer of the debtor to deduct from any remuneration of the debtor due at the time the order is served on the employer or thereafter due or accruing due such amount as is named in the order and to pay the amounts deducted into court, and section 7 of *The Wages Act* does not apply. Attachment of wages

R.S.O. 1970,
c. 486

(2) An order under subsection 1 has priority over any other seizure or attachment of wages arising before or after the service of the order. Priority of order

Security
for
payment

30. Where the court considers it appropriate in a proceeding under section 27, the court may order the debtor to give security for the payment of support or charge any property of the debtor therewith.

Realization
of security

31. Where a court orders security for the payment of support under this Part or charges a property therewith, the court may, upon application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge.

Liability
to
creditors
for
necessaries

32.—(1) Where money is owing to a creditor for necessities supplied to a person and,

- (a) the person is unable to pay;
- (b) there is another person who has an obligation to provide support; and
- (c) no order has been made granting or refusing support under section 18,

the creditor is entitled to recover from the person having the obligation to provide support the amount owing, to the extent of his or her ability to pay.

Proceeding
for support
pending

(2) An action to recover an amount under subsection 1 shall not proceed where a proceeding for support is pending to which the defendant or proposed defendant in the action is a party.

Pledging
credit for
necessaries

33.—(1) During cohabitation, a spouse has authority to render himself or herself and his or her spouse jointly and severally liable to a third party for necessities of life, except where the spouse has notified the third party that he or she has withdrawn the authority.

Liability
for
necessaries
of minor

(2) Where a person is entitled to recover against a minor under sixteen years of age in respect of the provision of necessities for the minor, each parent who has an obligation to support the minor is liable therefor jointly and severally with the minor.

Recovery
between
persons
jointly
liable

(3) Where persons are jointly and severally liable with each other under this section, their liability to each other shall be determined in accordance with their obligation to provide support.

Common
law
supplanted

(4) The provisions of this section apply in place of the rules of common law by which a wife may pledge the credit of her husband.

SECTION 31. This section provides a mechanism for enforcing a secured support order by selling the security.

SECTION 32. Where a person is obliged to support another, but a third party provides necessities instead, the third party may recover from the person obliged to pay support. Where a support order has been made in favour of the dependant, the third party must look to the dependant alone, as the court has fixed the amount of the support which the person is obliged to pay.

SECTION 33. While living together, either spouse may pledge the credit of the other for necessities unless this authority is specifically withdrawn by notice to the creditor. Both spouses are then jointly liable to the creditor. Similarly, under subsection 2, a creditor may recover necessities provided to a child under 16 from both the parents and the child. The liability as between the spouses, or between parent and child, is determined in accordance with need and ability to pay as set out in sections 14, 15 and 17.

Subsection 4 abolishes the common law agency of cohabitation and agency of necessity, which applied only in favour of a wife.

SECTION 34. This section provides a civil remedy to prevent a spouse from continually harassing and interfering with the other.

SECTION 35. This section provides for the making of a custody order or interim order in favour of either parent in the best interests of the child. The custody order need not be tied to a support order, as is now the case under section 3 of *The Deserted Wives' and Children's Maintenance Act*.

SECTION 36. Appeals are provided for in Acts governing the Supreme Court and county courts. This section is necessary because *The Provincial Courts Act* does not contain provisions for appeals. The appeal procedure will be set out in the rules.

SECTION 37. This section gives a provincial court (family division) the power to punish contempt of its orders under this Part. The Supreme Court and county courts already have such power.

SECTION 38. This Part extends to mobile homes, trailers, houseboats, etc.

SECTION 39. Where the family has or had two or more homes, this Part applies to all the family residences, subject to section 41. The definition of "matrimonial home" includes a home rented by the family and a unit in a co-operative housing development.

Where the property on which a matrimonial home is used for a purpose that is more than residential, such as for farming or other business purposes, only the surrounding land reasonably necessary for use of the residence is affected by this Part.

34. Upon application, a court may make an order restraining the spouse of the applicant from molesting, annoying or harassing the applicant or children in the lawful custody of the applicant and may require the spouse of the applicant to enter into such recognizance as the court considers appropriate. Order restraining harassment

35.—(1) Upon application, the court may order that either parent or any person have custody of or access to a child, in accordance with the best interests of the child and may at any time alter, vary or discharge the order. Custody of children

(2) An application to alter, vary or discharge the order shall be made to the court that made the order or to a co-ordinate court in another part of Ontario. Court

(3) Where an application is made under subsection 1, the court may make such interim order as the court considers appropriate. Interim orders

36. An appeal lies from an order of the provincial court (family division) under this Part to the county or district court in the county or district in which the provincial court (family division) is situated. Appeal from provincial court (family division)

37.—(1) In addition to its powers in respect of contempt, every provincial court (family division) may punish by fine or imprisonment, or by both, any wilful contempt of or resistance to its process, rules or orders under this Act, but the fine shall not in any case exceed \$1,000 nor shall the imprisonment exceed three months. Contempt of orders of provincial court (family division)

(2) An order for imprisonment under subsection 1 may be made conditional upon default in the performance of a condition set out in the order and may provide for the imprisonment to be served intermittently. Conditions of imprisonment

PART III

MATRIMONIAL HOME

38. In this Part, “property” means real or personal property. Interpretation

39.—(1) Property in which a married person has an interest and that is or has been occupied by the married person and his or her spouse as their family residence is their matrimonial home. Matrimonial home

More
than one
matrimonial
home

(2) Subsection 1 applies notwithstanding that its application results in more than one matrimonial home.

Ownership
of shares

(3) The ownership of a share or shares, or of an interest in a share or shares, of a corporation entitling the owner to the occupation of a housing unit owned by the corporation shall be deemed to be an interest in the unit for the purposes of subsection 1.

Residence
on farm-
land, etc.

(4) Where property that includes a matrimonial home is normally used for a purpose other than residential only, the matrimonial home is only such portion of the property as may reasonably be regarded as necessary to the use and enjoyment of the residence.

Right to
possession

40.—(1) A spouse is equally entitled to any right of possession of the other spouse in a matrimonial home.

Termination
of right to
possession

(2) Subject to an order of the court under this or any other Act, a right of a spouse to possession by virtue of subsection 1 ceases upon the spouse ceasing to be a spouse.

Registered
designation
of
matrimonial
home

41.—(1) Both spouses may, by instrument in the form prescribed by the regulations, designate a property to which they are entitled to possession as a matrimonial home and, upon the registration of the instrument and while there is a designation made by the spouses under this subsection that is not cancelled, any other property that would qualify as a matrimonial home under section 39 and that is not similarly designated ceases to be a matrimonial home.

Extent of
designation

(2) The property that is designated as a matrimonial home under subsection 1 may include any property contiguous to the matrimonial home that is described for the purpose in the instrument.

Cancellation
of
designation

(3) The designation of a matrimonial home under subsection 1 is cancelled upon the registration of,

- (a) an instrument in the form prescribed by the regulations executed by both spouses;
- (b) a decree absolute of divorce or judgment of nullity;
or
- (c) an order under section 45 cancelling the designation.

Effect of
cancellation

(4) The cancellation of the designation of a property under subsection 3 does not affect the status of the property

SECTION 40. Notwithstanding which spouse owns the home, both spouses are equally entitled to possession. The equal right to possession may be altered by a court order under section 45.

SECTION 41. The spouses may jointly designate one or more properties as matrimonial homes, and thereupon this Part ceases to apply to any property other than those designated. The designation must be registered.

SECTIONS 42 AND 43. A spouse may not sell, lease, mortgage or otherwise deal with the matrimonial home without the written consent of the other spouse, regardless of whether one spouse is sole legal and beneficial owner of the home. If a spouse deals with the home without consent, the transaction can be set aside unless an innocent third party holds the interest at that time.

A third party acquiring an interest in the home is protected if the spouses both join in the transaction, the non-owning spouse's consent in writing is obtained, a court dispenses with the consent under section 44 or the owning spouse provides an affidavit that the property was never the matrimonial home.

The non-owning spouse is protected by requiring landlords, mortgagees and other lienholders to accept payment from and give notice to that spouse as if he or she were an owner.

as a matrimonial home under section 39, subject to subsection 1 of this section.

(5) Upon there ceasing to be a designation under subsection 1, section 39 applies in respect of property that is a matrimonial home. ^{Revival of matrimonial homes}

42.—(1) No spouse shall dispose of, agree to dispose of or encumber any interest in a matrimonial home unless the other spouse joins in the instrument or consents to the transaction in writing in the form prescribed by the regulations. ^{Consent to alienation}

(2) Where a spouse disposes of, agrees to dispose of or encumbers an interest in a matrimonial home without the consent of the other as required by subsection 1, the transaction may be set aside on an application under section 44 unless the person holding the interest or encumbrance at the time of the application acquired it for value, in good faith and without notice that the property was at the time of the disposition, agreement or encumbrance a matrimonial home. ^{Setting aside transaction}

(3) Where a person acquires an interest in property from a married person or from a person claiming under a predecessor in title who was at the time of the disposition by him a married person, and, ^{Duty to inquire}

- (a) the spouse of the married person joins in the instrument or consents to the transaction as required by subsection 1;
- (b) the transaction is authorized by court order or an order has been made releasing the property as a matrimonial home;
- (c) an instrument designating another property as a matrimonial home of the married person and his or her spouse is registered under section 41 and not cancelled;
- (d) the disposition, agreement or encumbrance took place before this Part comes into force; or
- (e) the married person affirms by statutory declaration that the property has never been occupied by the married person and his or her spouse as a matrimonial home and the person acquiring the interest has no notice to the contrary,

the person acquires the interest free from any obligation or remedy under this Part.

(4) This section does not apply to the acquisition of an interest in property by operation of law. ^{Liens arising by operation of law}

Right of
redemption
and to
notice

43.—(1) Where a person is proceeding to realize upon a lien, encumbrance or execution or exercises a forfeiture against property that is a matrimonial home, the spouse who has a right of possession by virtue of section 39 has the same right of redemption or relief against forfeiture as the other spouse has and is entitled to any notice respecting the claim and its enforcement or realization to which the other spouse is entitled.

Service of
notice

(2) Any notice to which a spouse is entitled by virtue of subsection 1 shall be deemed to be sufficiently given if served or given personally or by registered mail addressed to the person to whom notice is to be given at his or her usual or last known address or, where none, the address of the matrimonial home, and, where notice is served or given by mail, the service shall be deemed to have been made on the fifth day after the day of mailing.

Effect of
payments
made by
spouse

(3) Where a spouse makes any payment by way of or on account of redemption or relief against forfeiture under the right conferred by subsection 1, the payment shall be applied in satisfaction of the claim giving rise to the lien, encumbrance, execution or forfeiture.

Powers of
court
respecting
alienation

44. The court may, on the application of a spouse or person having an interest in property, by order,

- (a) determine whether or not property is the matrimonial home and, if so, its extent;
- (b) authorize the disposition or encumbrance of the matrimonial home where the court finds that the spouse whose consent is required,
 - (i) cannot be found or is not available,
 - (ii) is not capable of giving or withholding consent, or
 - (iii) is unreasonably withholding consent,

subject to such terms and conditions including provision of other comparable accommodation or payment in place thereof as the court considers appropriate;

- (c) dispense with any notice required to be given under section 43; and
- (d) direct the setting aside of any transaction disposing of or encumbering an interest in the matri-

SECTION 45. The court has power to grant exclusive possession of part or all of the home and contents, but is not to exercise the power unless satisfied that other provision for shelter is inadequate in the circumstances.

monial home without the required consent and the reversion of the interest or any part of the interest upon such terms and subject to such conditions as the court considers appropriate.

45.—(1) Notwithstanding the ownership of a matrimonial home and its contents, and notwithstanding section 40, the court on application may by order, Order for possession of matrimonial home

- (a) direct that one spouse be given exclusive possession of a matrimonial home or part thereof for life or for such lesser period as the court directs and release any other property that is a matrimonial home from the application of this Part;
- (b) direct a spouse to whom exclusive possession of a matrimonial home is given to pay such periodic payments to the other spouse as is prescribed in the order;
- (c) direct that the contents of a matrimonial home, or any part thereof, remain in the home for the use of the person given possession;
- (d) fix the obligation to repair and maintain the matrimonial home or to pay other liabilities arising in respect thereof;
- (e) authorize the disposition or encumbrance of the interest of a spouse in a matrimonial home subject to the right to exclusive possession of the other spouse as ordered; and
- (f) where a false declaration is given under subsection 3 of section 42, direct the substitution of other real property for the matrimonial home or the setting aside of money or security to stand in place thereof, subject to such terms and conditions as the court considers appropriate.

(2) An order may be made under subsection 1 for temporary relief or pending the bringing or disposition of another application under this Act. Temporary possession

(3) An order for exclusive possession under subsection 1 shall not be made in favour of a spouse that does not have any other property interest in the matrimonial home unless, in the opinion of the court, other provision for shelter is not adequate in the circumstances or it is in the best interests of a child to do so. Order where no property interest

(4) A provincial court (family division) shall not make an order under clause *d* of section 44 or clause *e* or *f* of sub- Limitation on jurisdiction of family court

section 1 except for the provision of necessities or preventing the dependant from becoming a public charge.

Variation
of order

46. Upon the application of a person named in an order made under clause *a, b, c* or *d* of subsection 1 of section 45 and where the court is satisfied that there has been a material change in circumstances, the court may discharge, vary or suspend the order.

Interim
order for
preservation
of property

47. In an application under this Part, the court may make such interim order as it considers necessary for the delivering up, safekeeping and preservation of the matrimonial home or its contents.

Registration
of order
R.S.O. 1970,
cc. 409, 234

48. An order made under this Part is registrable against land under *The Registry Act* and *The Land Titles Act*.

Application
of Part

49.—(1) This Part applies to matrimonial homes that are situated in Ontario.

Idem

(2) This Part applies notwithstanding that,

- (a) the spouses entered into the marriage before this Part comes into force; or
- (b) the matrimonial home was acquired before this Part comes into force,

but does not apply to proceedings respecting possession of a matrimonial home that were commenced before this Part comes into force.

PART IV

DOMESTIC CONTRACTS

Interpre-
tation

50. In this Part,

- (a) “cohabitation agreement” means an agreement entered into under section 52;
- (b) “domestic contract” means a marriage contract, separation agreement or cohabitation agreement;
- (c) “marriage contract” means an agreement entered into under section 51;
- (d) “separation agreement” means an agreement entered into under section 53.

Marriage
contracts

51. Two persons may enter into an agreement, before their marriage or during their marriage while cohabiting,

SECTION 48. An order for possession may be registered against the land so as to provide notice to third parties.

SECTION 49. This Part applies to all matrimonial homes in Ontario, whether or not the spouses have a marriage contract (see section 55) and whether or not the spouses are otherwise subject to Ontario property law (see section 12). This Part covers persons married and matrimonial homes acquired before this Act comes into force, except where a spouse has applied for an order for possession before this Act is in effect.

SECTIONS 50 TO 53. This Part overcomes the common law rule which held that marriage contracts contemplating a future separation or divorce were void.

The sections create a general category called "domestic contracts", which is made up of marriage contracts, cohabitation agreements and separation agreements. Cohabitation contracts are akin to marriage contracts, but the parties are common law spouses as defined in section 13. Only a separation agreement may provide for custody of or access to children.

Court approval must be given to the marriage contract of a minor capable of entering into a marriage. Similarly, court approval is required where a committee enters into a marriage contract on behalf of a spouse who becomes mentally incompetent.

in which they agree on their respective rights and obligations under the marriage or upon separation or the annulment or dissolution of the marriage or upon death, including,

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children, but not the right to custody of or access to their children; and
- (d) any other matter in the settlement of their affairs.

52. A man and a woman who are cohabiting may enter into an agreement in which they agree on their respective rights and obligations during cohabitation, or upon ceasing to cohabit or death, including,

Cohabitation agreements

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children, but not the right to custody of or access to their children; and
- (d) any other matter in the settlement of their affairs.

53. Two persons who are married or spouses as defined in subclause i of clause b of section 13 and who have ceased to cohabit may enter into an agreement in which they agree on their respective rights and obligations, including,

Separation agreements

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children;
- (d) the right to custody of and access to their children; and
- (e) any other matter in the settlement of their affairs.

54.—(1) A domestic contract and any agreement to amend or rescind a domestic contract are not binding unless made in writing and signed by the persons to be bound and witnessed.

Form of contract

- Capacity of minor** (2) A minor who has capacity to contract marriage has capacity to enter into a domestic contract that is approved by the court, whether the approval is given before or after the contract is entered into.
- Agreement on behalf of mentally incompetent** (3) The committee of a person who is mentally incompetent or, if the committee is the spouse of such person or, if there is no committee, the Public Trustee may, subject to the approval of the court, enter into a domestic contract or give any waiver or consent under this Act on behalf of the mentally incompetent person.
- Rights re matrimonial home excepted** **55.**—(1) Any provision in a marriage contract purporting to limit the rights of a spouse under Part III in respect of a matrimonial home is void.
- Subject to best interests of child** (2) In the determination of any matter respecting the support, education, moral training or custody of a child, the court may disregard any provision of a domestic contract pertaining thereto where, in the opinion of the court, to do so is in the best interests of the child.
- Dum casta* clauses** (3) A provision in a domestic contract whereby any right of a spouse is dependent upon remaining chaste is void, but this subsection shall not be construed to affect a contingency upon remarriage or cohabitation with another.
- Rights of donors of gifts** **56.** Where a domestic contract provides that specific gifts made to one or both parties are not disposable without the consent of the donor, the donor shall be deemed to be a party to the contract for the purpose of the enforcement or any amendment of the provision.
- Contracts made outside Ontario** **57.** The manner and formalities of making a domestic contract and its essential validity and effect are governed by the proper law of the contract, except that,
- (a) a contract for which the proper law is that of a jurisdiction other than Ontario, is also valid and enforceable in Ontario if entered into in accordance with the internal law of Ontario; and
- (b) section 55 applies in Ontario to contracts for which the proper law is that of a jurisdiction other than Ontario.
- Paternity agreements** **58.**—(1) Where a man and a woman who are not spouses enter into an agreement to which a children's aid society is a party for the payment of the expenses of prenatal care and birth in respect of a child or for the support of a child

SECTION 55. Before separation, a spouse may not contract out of the right to control dealings with the matrimonial home or obtain possession of it. Any provision in a domestic contract respecting a child is to be enforced only if in the child's best interests. Subsection 3 invalidates a *dum casta* clause. See also section 17 (3).

Domestic contracts will also be invalid for any reason that would void another kind of contract, such as fraud, duress or undue influence.

Where a provision is held void, the court will determine under the ordinary law of contract whether the provision can be severed so as to allow enforcement of the remainder of the contract.

SECTION 56. Where a third party makes a gift to either or both spouses, subject to the condition that they do not dispose of it without his consent, and this provision is contained in a marriage contract, the person making the gift can enforce the provision notwithstanding that he was not a party to the original contract.

SECTION 57. A marriage contract may be subject to foreign law. If it is valid under either the foreign law or Ontario law, it will be recognized in Ontario. However, no marriage contract will be enforced to the extent that it contradicts section 55 or 17 (3).

SECTION 58. This section replaces the provisions for affiliation agreements formerly found in Part III of *The Child Welfare Act*. That Part is repealed by section 72.

SECTION 59. Domestic contracts entered into before this Act comes into force are valid, and subsisting affiliation agreements and separation agreements are preserved.

SECTIONS 60 TO 64. This Part replaces *The Fatal Accidents Act* and extends that Act to cover non-fatal injuries, as recommended by the Ontario Law Reform Commission in Part I of its Report on Family Law. It also replaces the actions for loss of consortium and loss of services of a child (see section 69).

With the abolition of the husband's property in the services of his wife and the parent's property in the services of a child, and the creation of a new, qualified obligation of support under this Act, a new basis is created on which family members can recover expenses they incur for the benefit of an injured person. This section will allow them to recover the same kind of pecuniary loss as can now be recovered under *The Fatal Accidents Act*.

Section 60 extends the right to claim to a broader class of related person than under *The Fatal Accidents Act*. Subsection 2 codifies the case law under *The Fatal Accidents Act*.

The following sections are based on the provisions of that Act and require all claimants to join in one action. Insurance payments are not to be considered in assessing damages. The \$800 limit on funeral expenses is removed to allow recovery of reasonable funeral expenses actually incurred.

or for both, on the application of a party to the agreement made to a provincial court (family division) or the Unified Family Court, the court may incorporate the agreement in an order, and Part II applies to the order in the same manner as if it were an order for support made under that Part.

(2) Where an application is made under subsection 1 ^{Absconding respondent} and a judge of the court is satisfied that the respondent is about to leave Ontario, the judge may issue a warrant in the form prescribed by the rules of the court for the arrest of the respondent.

(3) This section applies to agreements referred to in ^{Application to pre-existing agreements} subsection 1 that were made before this Part comes into force.

59. A separation agreement or marriage contract validly ^{Application of Act to pre-existing contracts} made before this Part comes into force shall be deemed to be a domestic contract for the purposes of this Act.

PART V

DEPENDANTS' CLAIM FOR DAMAGES

60.—(1) Where a person is injured or killed by the ^{Right of dependants to sue in tort} fault or neglect of another under circumstances where the person is entitled to recover damages, or would have been entitled if not killed, the spouse, as defined in Part II, children, grandchildren, parents, grandparents, brothers and sisters of the person are entitled to recover their pecuniary loss resulting from the injury or death from the person from whom the person injured or killed is entitled to recover or would have been entitled if not killed, and to maintain an action for the purpose in a court of competent jurisdiction. R.S.O. 1970, c. 164, s. 3 (1), *amended*.

(2) In an action under subsection 1, the right to damages ^{Contributory negligence} is subject to any apportionment of damages due to contributory fault or neglect of the person who was injured or killed. *New*.

(3) Not more than one action lies under subsection 1 for ^{One action and limitation of actions} and in respect of the same occurrence, and no such action shall be brought after the expiration of two years from the time the cause of action arose. R.S.O. 1970, c. 164, s. 5; 1975, c. 38, s. 1.

61.—(1) An action under subsection 1 in respect of a ^{Executor to sue where death} person who is killed shall be commenced by and in the name of the executor or administrator of the deceased. R.S.O. 1970, c. 164, s. 3, *part, amended*.

When action
may be
brought by
persons
beneficially
interested

(2) If there is no executor or administrator of the deceased, or if there is an executor or administrator and no such action is, within six months after the death of the deceased, brought by the executor or administrator, the action may be brought by all or any of the persons for whose benefit the action would have been if it had been brought by the executor or administrator.

Regulations
and pro-
cedure in
such case

(3) Every action so brought is for the benefit of the same persons and is subject to the same regulations and procedure, as nearly as may be, as if it were brought by the executor or administrator. R.S.O. 1970, c. 164, s. 7.

Joining
claims

62.—(1) Where an action is commenced under section 60, the plaintiff shall, in his statement of claim, name and join the claim of any other person who is entitled to maintain an action under section 60 in respect of the same injury or death and thereupon such person becomes a party to the action.

Affidavit

(2) A person who commences an action under section 60 shall file with the statement of claim an affidavit stating that to the best of his knowledge, information and belief the persons named in the statement of claim are the only persons who are entitled or claim to be entitled to damages under section 60. R.S.O. 1970, c. 164, s. 6 (1, 2), *amended*.

How money
may be paid
into court

63.—(1) The defendant may pay into court one sum of money as compensation for fault or neglect, to all persons entitled to compensation without specifying the shares into which it is to be divided. R.S.O. 1970, c. 164, s. 4.

Apportion-
ment

(2) Where the compensation has not been otherwise apportioned, a judge may apportion it among the persons entitled.

When pay-
ment may
be
postponed

(3) The judge may in his discretion postpone the distribution of money to which minors are entitled and may direct payment from the undivided fund. R.S.O. 1970, c. 164, s. 8.

Assessment
of damages,
insurance

64.—(1) In assessing the damages in an action brought under this Part, the court shall not take into account any sum paid or payable as a result of the death or injury under a contract of insurance.

Funeral
expenses

(2) For the purposes of this Part, damages may be awarded for reasonable expenses actually incurred for the burial of the person in respect of whose death the action is brought. R.S.O. 1970, c. 164, s. 3 (2, 3), *amended*.

SECTION 65. This section formerly appeared as section 1 (1, 2, 4) of *The Family Law Reform Act, 1975*. Subsection 3 (c) is new.

SECTION 66. This section formerly appeared as section 3 of *The Family Law Reform Act, 1975*.

SECTION 67. This section formerly appeared as section 4 of *The Family Law Reform Act, 1975*.

SECTION 68. The domicile of a minor is no longer dependent automatically on the domicile of the father alone. A minor who is or has been married is capable of acquiring a domicile as if an adult.

PART VI

AMENDMENTS TO THE COMMON LAW AND
STATUTE LAW

65.—(1) For all purposes of the law of Ontario, a married man has a legal personality that is independent, separate and distinct from that of his wife and a married woman has a legal personality that is independent, separate and distinct from that of her husband. Unit of legal personality abolished

(2) A married person has and shall be accorded legal capacity for all purposes and in all respects as if such person were an unmarried person. 1975, c. 41, s. 1 (1, 2). Capacity of married person

(3) Without limiting the generality of subsections 1 and 2, Idem

(a) each of the parties to a marriage has the like right of action in tort against the other as if they were not married;

(b) a married woman is capable of acting as guardian *ad litem* or next friend as if she were an unmarried woman; 1975, c. 41, s. 1 (3), *part.*

(c) the same rules shall be applied to determine the domicile of a married woman as for a married man.

(4) The purpose of subsections 1 and 2 is to make the same law apply, and apply equally, to married men and married women and to remove any difference therein resulting from any common law rule or doctrine, and subsections 1 and 2 shall be so construed. 1975, c. 41, s. 1 (4). Purpose of subss. 1, 2

66. No person shall be disentitled from bringing an action or other proceeding against another for the reason only that they stand in the relationship of parent and child. 1975, c. 41, s. 3. Actions between parent and child

67. No person shall be disentitled from recovering damages in respect of injuries incurred for the reason only that the injuries were incurred before his birth. 1975, c. 41, s. 4. Recovery for prenatal injuries

68.—(1) Subject to subsection 2, a child who is a minor, Domicile of minors

(a) takes the domicile of his or her parents, where both parents have a common domicile;

(b) takes the domicile of the parent with whom the child habitually resides, where the child resides with one parent only;

(c) takes the domicile of the father, where the domicile of the child cannot be determined under clause *a* or *b*; or

(d) takes the domicile of the mother, where the domicile of the child cannot be determined under clause *c*.

Idem

(2) The domicile of a minor who is or has been a spouse shall be determined in the same manner as if the minor were of full age.

Criminal conversation abolished

69.—(1) No action shall be brought for criminal conversation or for any damages resulting therefrom or from adultery.

Enticement and harbouring of spouse abolished

(2) No action shall be brought by a married person for the enticement or harbouring of the spouse of such person or for any damages resulting therefrom.

Loss of consortium abolished

(3) No action shall be brought by a married person for the loss of the consortium of his or her spouse or for any damages resulting therefrom.

Enticement, harbouring, seduction, loss of services of child abolished

(4) No action shall be brought by a parent for the enticement, harbouring, seduction or loss of services of his or her child or for any damages resulting therefrom.

R.S.O. 1970, c. 428; 1971, c. 98, Sched., par. 30, repealed

(5) *The Seduction Act*, being chapter 428 of the Revised Statutes of Ontario, 1970 and paragraph 30 of the Schedule to *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed.

R.S.O. 1970, c. 228, s. 59, amended

(6) Section 59 of *The Judicature Act*, being chapter 228 of the Revised Statutes of Ontario, 1970, is amended by striking out “criminal conversation, seduction” in the first line.

Dower abolished

70.—(1) The common law right of a widow to dower is hereby abolished.

R.S.O. 1970, c. 135; 1971, c. 98, Sched., par. 11, repealed

(2) *The Dower Act*, being chapter 135 of the Revised Statutes of Ontario, 1970, and paragraph 11 of the Schedule to *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed.

R.S.O. 1970, c. 152, s. 28 (2), repealed

(3) Subsection 2 of section 28 of *The Execution Act*, being chapter 152 of the Revised Statutes of Ontario, 1970, is repealed.

SECTION 69. This section abolishes several old and little used common law actions, as recommended by the Ontario Law Reform Commission in Part I of its Report on Family Law. The loss of consortium and loss of services actions are replaced by sections 60 to 64. Subsection 5 results from the abolition of the seduction action.

SECTION 70. Because of the rights conferred on husbands and wives under Parts I and III, dower is abolished. Subsection 4 preserves vested rights of dower where the husband dies before this Act comes into force. Where money has been paid into court in respect of an inchoate dower interest, the husband is entitled to recover the money. Subsections 2 and 3 repeal statutory references to dower.

The widower's right of curtesy is abolished by *The Succession Law Reform Act, 1977* (Bill 00).

SECTION 71. The alimony action is abolished, as it is replaced by Part II. Applications to vary existing alimony orders are to be made under section 20. Alimony actions that have not come to trial are converted into applications for support under Part II.

SECTION 72. Part III of *The Child Welfare Act* is replaced by Part II and section 58.

SECTION 73. *The Children's Maintenance Act* is replaced by Part II.

SECTION 74. The amendment is consequential to section 29 (2).

SECTION 75. *The Deserted Wives' and Children's Maintenance Act* is replaced by Part II.

(4) Subsections 1, 2 and 3 do not apply in respect of a Vested right to dower that has vested before subsections 1 and 2 come into force.

(5) Where money has been paid into court as an indemnity in respect of a right to dower that has not vested before this section comes into force, the husband of the person in respect of whose dower right the money was paid into court is entitled to be paid the money upon application to the accountant of the court, without order. Refund of indemnity held by accountant for dower

71.—(1) The right of a married woman to alimony under any law existing before this section comes into force is hereby abolished. Alimony abolished

(2) Where an action for alimony is commenced before subsection 1 comes into force and no evidence has been heard in the action before this Act comes into force, other than in respect of an interim order, the action shall be deemed to be an application under Part II subject to such directions as the court considers appropriate. Continuation of action commenced

72. Part III of *The Child Welfare Act*, being chapter 64 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1971, chapter 98, Schedule, paragraph 6, subparagraph ii, 1972, chapter 109, section 6, 1973, chapter 75, section 5 and 1975, chapter 1, sections 25, 26, 27 and 28, are repealed. R.S.O. 1970, c. 64, Part III, repealed

73. *The Children's Maintenance Act*, being chapter 67 of the Revised Statutes of Ontario, 1970 and subsection 2 of section 18 of *The Age of Majority and Accountability Act*, 1971, being chapter 98, are repealed. R.S.O. 1970, c. 67; 1971, c. 98, s. 18 (2), repealed

74. Section 4 of *The Creditors Relief Act*, being chapter 97 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following subsection: R.S.O. 1970, c. 97, s. 4 (9), amended

(9) This section does not apply to an attachment made under section 24 of *The Family Law Reform Act*, 1977. 1977, c. ... exempted

75. *The Deserted Wives' and Children's Maintenance Act*, being chapter 128 of the Revised Statutes of Ontario, 1970, subsection 1 of section 18 of *The Age of Majority and Accountability Act*, 1971, being chapter 98, and *The Deserted Wives' and Children's Maintenance Amendment Act*, 1973, being chapter 133, are repealed. R.S.O. 1970, c. 128; 1971, c. 98, s. 18 (1); 1973, c. 133, repealed

1974, c. 122,
s. 9,
re-enacted

76. Section 9 of *The Employment Standards Act, 1974*, being chapter 112, is repealed and the following substituted therefor:

Garnish-
ment or
attachment
of wages

1977, c. . . .

9. No employer shall dismiss or suspend an employee on the ground that garnishment proceedings are or may be taken against the employee or that an attachment order under section 24 of *The Family Law Reform Act, 1977* has been or may be made against the employee.

1975, c. 41,
ss. 1-4,
repealed

77. Sections 1, 2, 3 and 4 of *The Family Law Reform Act, 1975*, being chapter 41, are repealed.

R.S.O. 1970,
c. 164;
1973, c. 16;
1975, c. 38,
repealed

78. *The Fatal Accidents Act*, being chapter 164 of the Revised Statutes of Ontario, 1970, *The Fatal Accidents Amendment Act, 1973*, being chapter 16, and *The Fatal Accidents Amendment Act, 1975*, being chapter 38, are repealed.

R.S.O. 1970,
c. 222,
amended;
1971, c. 98,
s. 18 (3),
Sched.,
par. 14,
subpar. i,
repealed

79. Subsection 4, subsection 4a as enacted by the Statutes of Ontario, 1971, chapter 98, section 18, and subsection 5 of section 1, subsection 2 of section 2, section 10 and section 15 as re-enacted by the Statutes of Ontario, 1971, chapter 98, section 16, of *The Infants Act*, being chapter 222 of the Revised Statutes of Ontario, 1970, and section 16, subsection 3 of section 18 and subparagraph i of paragraph 14 of the Schedule to *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed.

R.S.O. 1970,
c. 228, s. 81,
repealed

80.—(1) Subject to subsection 2, section 81 of *The Judicature Act*, being chapter 228 of the Revised Statutes of Ontario, 1970, is repealed.

Continu-
ance for
existing
judgments

(2) The provision repealed by subsection 1 remains in force in respect of a judgment for alimony in an action commenced before this section comes into force.

R.S.O. 1970,
c. 262, ss. 1, 12,
repealed

81. Sections 1 and 12 of *The Married Women's Property Act*, being chapter 262 of the Revised Statutes of Ontario, 1970, are repealed.

R.S.O. 1970,
c. 265, ss. 1-5,
8;
1971, c. 98,
s. 18 (4),
repealed

82. Sections 1, 2, 3, 4, 5 and 8 of *The Matrimonial Causes Act*, being chapter 265 of the Revised Statutes of Ontario, 1970 and subsection 4 of section 18 of *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed.

R.S.O. 1970,
c. 336,
repealed

83. *The Parents' Maintenance Act*, being chapter 336 of the Revised Statutes of Ontario, 1970, is repealed.

SECTION 76. *The Employment Standards Act, 1974* is amended to extend the protection against dismissal or suspension in respect of garnishment of wages to cover attachment of wages under section 29 of this Act.

SECTION 77. Sections 1 to 4 of *The Family Law Reform Act, 1975* are incorporated in or replaced by this Act. See sections 6, 7, 65, 66 and 67.

SECTION 78. *The Fatal Accidents Act* is incorporated in sections 60 to 64.

SECTION 79. Provisions of *The Infants Act* relating to support and marriage contracts are repealed, as they are replaced by Part II and Part IV, respectively.

SECTION 80. The repeal of section 81 of *The Judicature Act*, which allows the registration of alimony orders against land, results from the abolition of alimony in section 71.

SECTION 81. The remaining sections of *The Married Women's Property Act* are repealed, as they are replaced by sections 7 and 8.

SECTION 82. Provisions of *The Matrimonial Causes Act* relating to support on the annulment of a marriage are repealed, as they are replaced by Part II.

SECTION 83. *The Parents' Maintenance Act* is replaced by Part II.

SECTION 84. *The Pension Benefits Act* is amended to make pensions available to satisfy a support order.

SECTION 85. The repealed provision allows support orders made in the Supreme Court to be filed for enforcement in the provincial court (family division). This is provided for in section 26. The repealed provision remains in force for orders made in actions begun before this Act comes into force.

SECTION 86. This amendment is made to bring the terminology in *The Reciprocal Enforcement of Maintenance Orders Act* into line with that used in this Act.

SECTION 87. The provision of *The Statute of Frauds* relating to marriage contracts is replaced by section 54 (1).

SECTION 88. No action or proceeding under the repealed or abolished provisions may be begun after this Act comes into force.

84. Section 24 of *The Pension Benefits Act*, being chapter 342 of the Revised Statutes of Ontario, 1970 is amended by adding thereto the following subsection:

R.S.O. 1970,
c. 342,
s. 24,
amended

- (2) Subsection 1 does not apply to the execution, seizure or attachment of moneys payable under a pension plan in satisfaction of an order for support under *The Family Law Reform Act*, 1977.

Application
of subs. 1

1977, c. ...

85.—(1) Subject to subsection 2, section 25 of *The Provincial Courts Act*, being chapter 369 of the Revised Statutes of Ontario, 1970, is repealed.

R.S.O. 1970,
c. 369, s. 25,
repealed

- (2) The provision repealed by subsection 1 remains in force in respect of a judgment or order for alimony or maintenance made in an action commenced before this section comes into force.

Continu-
ance for
existing
judgments

86.—(1) Subsection 1 of section 4 of *The Reciprocal Enforcement of Maintenance Orders Act*, being chapter 403 of the Revised Statutes of Ontario, 1970, is amended by striking out "a summons" in the seventh line and inserting in lieu thereof "notice".

R.S.O. 1970,
c. 403,
s. 4 (1),
amended

- (2) Subclause i of clause a of subsection 3 of the said section 4 is amended by striking out "summons" in the fourth line and inserting in lieu thereof "notice".

Idem
s. 4 (3) (a) (i),
amended

87. Section 4 of *The Statute of Frauds*, being chapter 444 of the Revised Statutes of Ontario, 1970, is amended by striking out "any agreement made upon consideration of marriage, or upon" in the fifth and sixth lines.

R.S.O. 1970,
c. 444, s. 4,
amended

88. Sections 69, 72, 73, 75, 78, 79, 81, 82 and 83 apply in all cases when they come into force except in cases where an action or proceeding was commenced under the abolished, repealed or amended provision before that date.

Application
of ss. 69, 72, 73,
75, 78, 79, 81, 82
and 83

GENERAL

89. The Lieutenant Governor in Council may make regulations respecting any matter required to be or referred to as prescribed by the regulations.

Regulations

90. This Act comes into force on the 1st day of September, 1977.

Commence-
ment

91. This Act may be cited as *The Family Law Reform Act*, 1977.

Short title

An Act to reform the Law respecting
Property Rights and Support Obligations
between Married Persons and in other
Family Relationships

1st Reading

March 31st, 1977

2nd Reading

3rd Reading

THE HON. R. McMURTRY
Attorney General

(Government Bill)

BILL 7

Government Bill

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publications

The Marriage Act, 1977



THE HON. R. MCMURTRY
Attorney General

TORONTO

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EXPLANATORY NOTE

The Bill revises *The Marriage Act* for the purpose of implementing some of the recommendations of the Ontario Law Reform Commission made in Part II of its Report on Family Law (Marriage) and also to implement certain administrative improvements.

The principal changes are:

1. The Act only applies to the first marriage ceremony and permits additional ceremonies by the same couple. (s. 1 (2)).
2. The requirement of fifteen days residence is deleted.
3. The minimum age for marriage is 18 years or 16 years with consent of the parents. (s. 5).
4. The duty of performing civil marriages now performed by provincial judges and county and district court judges is extended to justices of the peace and other designated persons. (s. 24).
5. The action for breach of promise of marriage is abolished. (s. 32)
6. The question of fault is removed from consideration of the question of entitlement to gifts made in contemplation of or conditional upon marriage. (s. 33)
7. The procedural forms and prescribing of fees are moved from the Act to be provided by regulations.

BILL 7

1977

The Marriage Act, 1977

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-
tation

- (a) “band” means a band as defined in the *Indian Act* (Canada); R.S.C. 1970,
c. I-6
- (b) “church” includes chapel, meeting-house or place set aside for religious worship;
- (c) “Indian” means a person who is registered as an Indian or entitled to be registered as an Indian under the *Indian Act* (Canada);
- (d) “issuer” means a person authorized under this Act to issue marriage licences;
- (e) “judge” means a provincial judge or a judge of a county or district court;
- (f) “licence” means a marriage licence issued under this Act;
- (g) “Minister” means the Minister of Consumer and Commercial Relations;
- (h) “prescribed” means prescribed by the regulations;
- (i) “regulations” means the regulations made under this Act;
- (j) “reserve” means a reserve as defined in the *Indian Act* (Canada). R.S.O. 1970, c. 261, s. 1; 1972, c. 1, s. 44 (1-3), *amended*.

Application
of Act to
subsequent
ceremonies

(2) This Act does not apply in respect of any ceremony or form of marriage gone through by two persons who are married to each other by a marriage previously solemnized in accordance with this Act or recognized as valid in Ontario.
New.

Administra-
tion

2. The administration of this Act is under the direction of the Minister.

Delegation
of powers
and duties

3. Where, under this Act, a power or duty is granted to or vested in the Minister, he may in writing, subject to the approval of the Lieutenant Governor in Council, delegate that power or duty to the Deputy Minister of Consumer and Commercial Relations, or to any officer or officers of the Ministry of Consumer and Commercial Relations, subject to such limitations, restrictions, conditions and requirements as the Minister may set out in his delegation. 1972, c. 1, s. 44 (3), *amended*.

Authority
to marry

4. No marriage may be solemnized except under the authority of a licence issued in accordance with this Act or the publication of banns. R.S.O. 1970, c. 261, s. 4 (1), *amended*.

Who may
marry

5.—(1) Any person who is of the age of majority may obtain a licence or be married under authority of publication of banns, provided no lawful cause exists to hinder the solemnization. R.S.O. 1970, c. 261, s. 5 (1), *amended*.

Idem

(2) No person shall issue a licence to a minor, or solemnize the marriage of a minor under the authority of the publication of banns, except where the minor is of the age of sixteen years or more and has the consent in writing of both parents in the form prescribed by the regulations.

Giving of
consent

(3) The consent referred to in subsection 2 is not required in respect of a person who is a widow, widower or divorced.

Idem

(4) Where one of the parents of a minor is dead or both parents are living apart, the consent required by subsection 2 may be given by the parent having actual or legal custody of the minor.

Idem

1974, c. 2

(5) Where both parents of a minor are dead or are voluntary or involuntary patients in a psychiatric facility, or are residents of a facility under *The Developmental Services Act, 1974*, the consent required by subsection 2 may be given by a lawfully appointed guardian or an acknowledged guardian who has brought up or who for the three years immediately preceding the intended marriage has supported the minor.

(6) Where a minor is made a ward of someone other than ^{Idem} a parent by order of a court or under any Act, the consent required by subsection 2 may be given by the lawful guardian of the minor or person responsible for exercising the rights and duties of a guardian of the minor. R.S.O. 1970, c. 261, ss. 7, 8, *amended*.

6.—(1) Where a person whose consent is required by section 5 is not available or unreasonably or arbitrarily with- ^{Application to dispense with consent} holds his consent, the person in respect of whose marriage the consent is required may apply to a judge without the intervention of a next friend for an order dispensing with the consent.

(2) The judge shall hear the application in a summary ^{Powers of judge} manner and may, in his discretion, make an order dispensing with the consent required by section 5. R.S.O. 1970, c. 261, s. 9, *amended*.

7. No person shall issue a licence to or solemnize the marriage of any person whom he knows or has reasonable grounds to believe is mentally ill or mentally defective or under the influence of intoxicating liquor or drugs. ^{Persons mentally ill or under influence} R.S.O. 1970, c. 261, s. 6, *amended*.

8.—(1) An applicant for a licence who has been previously married is entitled to be issued a licence if such marriage has been dissolved or annulled and such dissolution or annulment is recognized under the law of Ontario and the applicant ^{Where dissolution of former marriage recognized in Ontario} otherwise complies with the requirements of this Act.

(2) Subject to subsection 6, no issuer shall issue a licence ^{Material to be filed with issuer where dissolution in Canada} to a person whose previous marriage has been dissolved or annulled in Canada unless such person deposits with the issuer,

(a) the final decree or judgment dissolving or annulling the marriage or a copy of the final decree or judgment or Act dissolving or annulling the marriage, certified by the proper officer; and

(b) such other material as the issuer may require.

(3) Subject to subsection 6, no issuer shall issue a licence ^{Where dissolution, etc., outside Canada} to a person whose previous marriage has been dissolved or annulled elsewhere than in Canada, unless the authorization in writing of the Minister is obtained upon the deposit of such material as he may require.

Review of
refusal to
issue
licence

1971, c. 48

Parties

Issue of
licence
under court
order

Application
for presump-
tion of death

(4) Where an application for a licence by a person claiming to be entitled to be issued a licence under subsection 1 or on the grounds that the applicant is mentally ill or mentally defective is refused by an issuer, or the Minister refuses to issue an authorization under subsection 3, such person may make an application for judicial review under *The Judicial Review Procedure Act, 1971* to the Supreme Court for an order directing that a licence be issued to him and if the court finds that he is so entitled it may make such an order.

(5) The applicant, the Minister and such other persons as the court may order are parties to an application under subsection 4.

(6) Where an applicant for a licence files with an issuer, together with his application, an order of the Supreme Court made on an application under subsection 4 directing that a licence be issued to him, the issuer shall issue the licence. 1971, c. 50, s. 55 (1).

9.—(1) A married person whose spouse is missing and who alleges,

(a) that his spouse has been continuously absent for at least seven years immediately preceding the application;

(b) that his spouse has not been heard from or heard of during such period by the applicant or to the knowledge of the applicant by any other person; and

(c) that the applicant has made reasonable inquiries and has no reason to believe that his spouse is living,

may apply to the judge of a county or district court for an order under this section.

Order

(2) Upon being satisfied as to the truth of the matters alleged, the judge may, in his discretion, make an order declaring that the spouse shall be presumed dead. R.S.O. 1970, c. 261, s. 11 (1, 2).

Remarriage
authorized

(3) Where an order has been obtained under this section, the person in whose favour the order was made may, subject to the provisions of this Act, obtain a licence or be married under the authority of publication of banns upon depositing a copy of the order with the person issuing the licence or solemnizing the marriage together with an affidavit in the prescribed form.

(4) The order has no effect for any purpose other than the issuance of a licence under subsection 3. R.S.O. 1970, c. 261, s. 11 (3, 4), *amended*. Effect of order

10. Notwithstanding anything in this Act, if the Minister considers that circumstances justify the issue of a licence in any particular case, he may, in his absolute discretion, authorize the issue of the licence. R.S.O. 1970, c. 261, s. 10, *amended*. Discretionary power of Minister

11.—(1) Marriage licences may be issued by the clerk of every city, town and village. Issuers

(2) Where it is considered expedient for the public convenience, the Lieutenant Governor in Council may appoint as an issuer the clerk of any township, or any person resident in a county, or in a township adjacent thereto, or in a provisional judicial district, or a member of a band upon the recommendation of the council of the band. R.S.O. 1970, c. 261, s. 30, *amended*. In townships and unorganized territory

(3) An issuer may, with the approval in writing of the Minister or of the head of the council of the municipality of which he is clerk, appoint in writing one or more deputies to act for him, and any such deputy while so acting has the power of the issuer appointing him. Deputy issuers

(4) The issuer shall, upon appointing a deputy, forthwith transmit to the Minister a notice of the appointment, and of the name and official position of the person by whom the appointment has been approved, and the Minister may at any time cancel the appointment. Notice of appointment of deputy

(5) The deputy shall sign each licence issued by him with the name of the issuer as well as his own name in the following manner: Signature of licences by deputy

AB, Issuer of Marriage Licences, per CD, Deputy Issuer.

R.S.O. 1970, c. 261, s. 31.

12.—(1) An issuer or the Minister may require evidence to identify any applicant or to establish his status and may examine, under oath if required, any applicant or other person as to any matter pertaining to the issue of a licence. R.S.O. 1970, c. 261, s. 33, *amended*. Evidence on applications

(2) Where an issuer has reason to believe that any information set out in an application for a licence is untrue, he shall not issue the licence unless, on the production of such further evidence as he may require, he is satisfied as to the truth of the information. R.S.O. 1970, c. 261, s. 35, *amended*. Untrue information

Record of
licences

13.—(1) Every issuer shall keep in his office a record of the serial number and the date of issue of every licence issued by him, and the names and addresses of the parties to the intended marriage.

Searches

(2) Any person is entitled, upon application, to have a search made respecting any licence issued within three months immediately preceding the date of application. R.S.O. 1970, c. 261, s. 34.

Material to be
forwarded to
Registrar
General

14. Every issuer immediately upon issuing a licence and every person registered as authorized to solemnize marriage upon publishing banns shall forward to the Registrar General,

(a) any consent under section 5;

(b) any judge's order under section 6;

(c) any affidavit or judge's order under section 9;

(d) any documentary or other material filed on the application for a licence under section 8;

(e) any affidavit as to age;

(f) any documentary material obtained under section 12. R.S.O. 1970, c. 261, s. 36, *amended*.

Oaths

15. Issuers may administer oaths for the purposes of this Act. R.S.O. 1970, c. 261, s. 37.

Indians

16. Where both parties to an intended marriage are Indians ordinarily resident on a reserve in Ontario or on Crown lands in Ontario no fee shall be charged for the licence. R.S.O. 1970, c. 261, s. 39, *amended*.

Publication
of banns

17.—(1) Where a marriage is to be solemnized under the authority of publication of banns, the intention to marry shall be proclaimed openly in an audible voice during divine service,

(a) where the parties are in the habit of attending worship at the same church, being within Canada, at that church; or

(b) where the parties are in the habit of attending worship in different churches, being within Canada, in each such church.

Method and
time of
publication

(2) The banns shall be published according to the usage of the denomination, faith or creed of the church in which they are published and during divine Sunday service.

(3) Where the usage of any denomination, faith or creed ^{Exception} substitutes any other day as the usual and principal day of the week for the celebration of divine service, the banns shall be published on such other day.

(4) The person or persons who publish banns shall certify ^{Proof} proof thereof in the prescribed form. R.S.O. 1970, c. 261, s. 15, *amended*.

18. Banns shall not be published where either of the ^{Where banns not to be published} parties to the intended marriage has been married and the marriage has been dissolved or annulled. R.S.O. 1970, c. 261, s. 18, *amended*.

19. Form 1 respecting the prohibited degrees of affinity ^{Prohibited degrees to be endorsed} and consanguinity shall be endorsed on the licence and on the proof of publication of banns. R.S.O. 1970, c. 261, s. 45 (1), *amended*.

20.—(1) No person shall solemnize a marriage unless he ^{Who may solemnize marriage} is authorized by or under section 24 or is registered under this section as a person authorized to solemnize marriage.

(2) Upon application the Minister may, subject to subsec- ^{Application for registration} tion 3, register any person as a person authorized to solemnize marriage.

(3) No person shall be registered unless it appears to the ^{Who may be registered} Minister,

- (a) that the person has been ordained or appointed according to the rites and usages of the religious body to which he belongs, or is, by the rules of that religious body, deemed ordained or appointed;
- (b) that the person is duly recognized by the religious body to which he belongs as entitled to solemnize marriage according to its rites and usages;
- (c) that the religious body to which the person belongs is permanently established both as to the continuity of its existence and as to its rites and ceremonies; and
- (d) that the person is resident in Ontario or has his parish or pastoral charge in whole or in part in Ontario; provided that in the case of a person who is in Ontario temporarily and who, if resident in Ontario, might be registered under this section, the Minister may register him as authorized to solemnize marriage during a period to be fixed by the Minister.

Where no person authorized to solemnize marriage	(4) Notwithstanding subsection 1, where it appears to the Minister that the doctrines of a religious body described in clause <i>c</i> of subsection 3 do not recognize any person as authorized to solemnize marriage, the Minister may register a person duly designated by a congregation of the religious body who shall, in respect of marriages performed in the congregation, perform all the duties imposed by this Act upon a person solemnizing a marriage, other than performing the solemnization.
Idem	(5) Where a person is registered under subsection 4, every marriage solemnized in the congregation according to the rites, usages and customs of the religious body is valid. R.S.O. 1970, c. 261, s. 22, <i>amended</i> .
Register	21. —(1) The Minister shall keep a register of the name of every person registered as a person authorized to solemnize marriage, the date of such registration, and such other particulars as he considers advisable.
Certificate of registration	(2) The Minister may issue a certificate of registration under this section in the prescribed form. R.S.O. 1970, c. 261, s. 23.
Cancellation of registration	22. —(1) Where it appears to the Minister that any person registered as authorized to solemnize marriage has ceased to possess the qualifications entitling him to be so registered, or for any other cause, the Minister may cancel such registration.
Notice of change	(2) Every religious body, members of which are registered under this Act, shall notify the Minister of the name of every such member so registered who has died or has ceased to reside in Ontario or has ceased to be associated with such religious body. R.S.O. 1970, c. 261, s. 24.
Publication of registration and cancellation	23. When a person is registered under this Act as authorized to solemnize marriage, and when any such registration is cancelled, the Minister shall publish notice thereof in <i>The Ontario Gazette</i> . R.S.O. 1970, c. 261, s. 25.
Civil marriage	24. —(1) A judge, a justice of the peace or any other person of a class designated by the regulations may solemnize marriages under the authority of a licence.
Time and place	(2) The solemnization of a marriage by a judge shall take place in the judge's office and shall be performed between the hours of 9 o'clock in the morning and 5 o'clock in the afternoon.
Form of ceremony	(3) No particular form of ceremony is required except that in some part of the ceremony, in the presence of the person

solemnizing the marriage and witnesses, each of the parties shall declare:

I do solemnly declare that I do not know of any lawful impediment why I, AB, may not be joined in matrimony to CD,

and each of the parties shall say to the other:

I call upon these persons here present to witness that I, AB, do take you, CD, to be my lawful wedded wife (*or husband*),

after which the person solemnizing the marriage shall say:

I, EF, by virtue of the powers vested in me by *The Marriage Act, 1977*, do hereby pronounce you AB and CD to be husband and wife.

R.S.O. 1970, c. 261, s. 26, *amended*.

25. Every marriage shall be solemnized in the presence of the parties and at least two witnesses who shall affix their names as witnesses to the entry in the register made under section 28. R.S.O. 1970, c. 261, s. 20. Attendance of parties and witnesses

26. No marriage shall be solemnized under the authority of publication of banns unless proof of publication by the person or persons publishing the banns has been deposited with the person solemnizing the marriage. R.S.O. 1970, c. 261, s. 17. Proof of publication

27.—(1) A marriage shall not be solemnized under the authority of a licence earlier than the third day after the date of the issue of the licence, but the Minister in his absolute discretion may authorize the solemnization of the marriage earlier than such third day. R.S.O. 1970, c. 261, s. 14, *amended*. Waiting period: under licence

(2) A marriage shall not be solemnized under the authority of publication of banns, earlier than the fifth day after the date of the publication of banns. R.S.O. 1970, c. 261, s. 16, *amended*. Idem: under banns

(3) A marriage shall be solemnized only within the three months immediately following the issue of the licence or the publication of banns, as the case may be. R.S.O. 1970, c. 261, s. 19, *amended*. Time within which marriage to be solemnized

28.—(1) Every person shall immediately after he has solemnized a marriage, Entry in marriage register

(a) where the marriage was solemnized in a church, enter in the church register kept for the purpose; or

- (b) where the marriage was solemnized elsewhere than in the church, enter in a register kept by him for the purpose,

the particulars prescribed by the regulations, and the entry shall be authenticated by his signature and those of the parties and witnesses. R.S.O. 1970, c. 261, s. 27, *amended*.

Marriage
certificate

(2) Every person who solemnizes a marriage shall, at the time of the marriage, if required by either of the parties thereto, give a certificate of the marriage specifying the names of the parties, the date of the marriage, the names of the witnesses, and whether the marriage was solemnized under the authority of a licence or publication of banns. R.S.O. 1970, c. 261, s. 21, *amended*.

Supply of
marriage
registers

29.—(1) Every person or religious body authorized to solemnize marriages may apply to the Minister for a marriage register, and the Minister shall thereupon supply the register.

Property of
Crown

(2) Every register supplied by the Minister is the property of the Crown. R.S.O. 1970, c. 261, s. 28, *amended*.

Protection
of persons
solemnizing
marriage in
good faith

30. No person who solemnizes or purports to solemnize a marriage is subject to any action or liability by reason of there having been any legal impediment to the marriage unless, at the time he performed the ceremony, he was aware of the impediment. R.S.O. 1970, c. 261, s. 44.

Marriages
solemnized
in good
faith

31. If the parties to a marriage solemnized in good faith and intended to be in compliance with this Act are not under a legal disqualification to contract such marriage and after such solemnization have lived together and cohabited as man and wife, such marriage shall be deemed a valid marriage, notwithstanding that the person who solemnized the marriage was not authorized to solemnize marriage, and notwithstanding the absence of or any irregularity or insufficiency in the publication of banns or the issue of the licence. R.S.O. 1970, c. 261, s. 46.

Breach of
promise of
marriage
abolished

32.—(1) No action shall be brought for a breach of a promise to marry or for any damages resulting therefrom.

Application
of subs. 1

(2) Subsection 1 does not apply in respect of actions for breach of promise to marry or damages resulting therefrom commenced before the day on which this Act comes into force. *New*.

Recovery of
gifts made in
contempla-
tion of
marriage

33. Where one person makes a gift to another in contemplation of or conditional upon their marriage to each

other and the marriage fails to take place or is abandoned, the question of whether or not the failure or abandonment was caused by or was the fault of the donor shall not be considered in determining the right of the donor to recover the gift. *New.*

34. The Lieutenant Governor in Council may make regu- ^{Regulations}
lations,

- (a) prescribing forms for the purposes of this Act and providing for their use, and requiring any matter therein to be verified by affidavit;
- (b) prescribing any matter required by this Act to be prescribed by the regulations;
- (c) requiring the payment of fees in respect of any matter required or authorized to be done under this Act, and providing for the retention of fees or any portion thereof by issuers and persons solemnizing marriages or any class of them and for the commutation of such fees;
- (d) prescribing the duties of issuers;
- (e) requiring persons authorized to solemnize marriages to furnish such information and returns as are prescribed;
- (f) amending Form 1 to make it conform to the law for the time being;
- (g) designating classes of persons authorized to solemnize marriages under section 24. *New.*

35.—(1) Every person who knowingly makes any false ^{Penalty: false statements} statement in any document required under this Act, in addition to any other penalty or punishment to which he may be liable, is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or to both.

(2) Every person who contravenes any provision of this ^{Idem: general} Act for which no other penalty is provided is guilty of an offence and on summary conviction is liable to a fine of not more than \$500. R.S.O. 1970, c. 261, ss. 47-52, *amended*.

36. The following are repealed:

^{Repeals}

1. *The Marriage Act*, being chapter 261 of the Revised Statutes of Ontario, 1970.

2. *The Marriage Amendment Act, 1972*, being chapter 32.
3. Section 55 of *The Civil Rights Statute Law Amendment Act, 1971*, being chapter 50.
4. Section 44 of *The Government Reorganization Act, 1972*, being chapter 1.

Commence-
ment

37. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

38. This Act may be cited as *The Marriage Act, 1977*.

FORM 1

(Section 19)

Degrees of affinity and consanguinity which, under the statutes in that behalf, bar the lawful solemnization of marriage.

A man may not marry his

1. Grandmother
2. Grandfather's wife
3. Wife's grandmother
4. Aunt
5. Wife's aunt
6. Mother
7. Step mother
8. Wife's mother
9. Daughter
10. Wife's daughter
11. Son's wife
12. Sister
13. Granddaughter
14. Grandson's wife
15. Wife's granddaughter
16. Niece
17. Nephew's wife

A woman may not marry her

1. Grandfather
2. Grandmother's husband
3. Husband's grandfather
4. Uncle
5. Husband's uncle
6. Father
7. Step father
8. Husband's father
9. Son
10. Husband's son
11. Daughter's husband
12. Brother
13. Grandson
14. Granddaughter's husband
15. Husband's grandson
16. Nephew
17. Niece's husband

The relationships set forth in this table include all such relationships, whether by the whole or half blood.

R.S.O. 1970, c. 261, Form 10, *amended*.

The Marriage Act, 1977

1st Reading

March 31st, 1977

2nd Reading

3rd Reading

THE HON. R. MCMURTRY
Attorney General

(*Government Bill*)

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**An Act to reform the Law respecting
Succession to the Estates of Deceased Persons**

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TORONTO

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EXPLANATORY NOTES

The Bill provides for a comprehensive reform of the law of testate and intestate succession as a part of the general reform of family law. The Bill implements the reports of the Ontario Law Reform Commission relating to wills and international wills and adopts principles relating to estates recommended in its reports on children, support obligations and family property.

Principal changes include the following:

1. The equalization of the treatment of children born within or outside marriage in estate matters.
2. The adoption of *The Uniform Wills Act*, including recognition of the holograph will, and the adoption of the Uniform Law on the Form of an International Will.
3. The adoption of the basic principle of *The Uniform Survivorship Act*.
4. Increasing the preferential share of a spouse on intestacy from \$50,000 to \$75,000 and the provision of a formula for determining a preferential share in cases of partial intestacy.
5. Equalizing the rights of spouses on intestacy to a distributive share in any property remaining after the preferential share and, where there are no children, providing for the surviving spouse to take the remainder to the exclusion of next of kin.
6. Enabling dependants of a deceased person to make a claim for support against the estate not only in cases where the deceased made insufficient provision for them by will but also in cases where the deceased died without a will.
7. Enlarging the classes of persons who may claim support from an estate as dependants generally, so as to include collaterals, and so as to recognize the claims of common law spouses and former spouses in certain cases.
8. Equalizing the effect of conduct on the claims of widows and widowers for support from an estate.
9. Redefining the estate of the deceased against which a claim for support may be made so as to include revocable *inter vivos* trusts and gifts made in contemplation of death and excluding property which is the subject of a contract to make a will to the extent that valuable consideration has been given therefor.
10. Redefining the class of persons who have rights under *The Compensation for Victims of Crime Act, 1971* so as to have a consistent approach with respect to survivors' benefits for dependants.

BILL 8

1977

An Act to reform the Law respecting Succession to the Estates of Deceased Persons

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-
tation

- (a) “child” means a child born within or outside marriage, subject to sections 83 and 85 of *The Child Welfare Act* (which relate to the effect of adoption), and includes a child conceived before and born alive after the death of the parent; R.S.O. 1970,
c. 64
- (b) “grandchild” means the child of a child;
- (c) “issue” means any lineal descendant of a person, whether born within or outside marriage, subject to sections 83 and 85 of *The Child Welfare Act* (which relate to the effect of adoption), and includes issue conceived before and born alive after the death of the person;
- (d) “parent” means the father or mother of a child;
- (e) “personal representative” means an executor, an administrator or an administrator with will annexed;
- (f) “property” means real or personal property;
- (g) “will” includes,
 - (i) a testament,
 - (ii) a codicil,
 - (iii) an appointment by will or by writing in the nature of a will in exercise of a power, and
 - (iv) any other testamentary disposition. R.S.O.
1970, c. 499, s. 1, amended.

Relationship
of persons
born
outside
marriage

(2) In this Act, and in any will unless a contrary intention is shown in the will, a reference to a person in terms of a relationship to another person determined by blood or marriage shall be deemed to include a person who comes within the description notwithstanding that he or any other person through whom the relationship is traced was born outside marriage.

Application
of subs. 2

(3) Subsection 2 applies in respect of wills made on or after the 1st day of September, 1977. *New.*

PART I

TESTATE SUCCESSION

GENERAL

Power to
dispose of
property
by will

2. A person may by will devise, bequeath or dispose of all property (whether acquired before or after making his will), to which at the time of his death he is entitled either at law or in equity, including,

(a) estates *pur autre vie*, whether there is or is not a special occupant and whether they are corporeal or incorporeal hereditaments;

(b) contingent, executory or other future interests in property, whether the testator is or is not ascertained as the person or one of the persons in whom those interests may respectively become vested, and whether he is entitled to them under the instrument by which they were respectively created or under a disposition of them by deed or will; and

(c) rights of entry, whether for conditions broken or otherwise. R.S.O. 1970, c. 499, s. 8, *amended.*

Will to be
in writing

3. A will is valid only when it is in writing. R.S.O. 1970, c. 499, s. 11 (1), *part.*

Execution

4.—(1) Subject to sections 5 and 6, a will is not valid unless,

(a) at its end it is signed by the testator or by some other person in his presence and by his direction;

- (b) the testator makes or acknowledges the signature in the presence of two or more attesting witnesses present at the same time; and
- (c) two or more of the attesting witnesses subscribe the will in the presence of the testator.

(2) Where witnesses are required by this section, no form ^{Idem} of attestation is necessary. R.S.O. 1970, c. 499, s. 11 (1), *part, amended.*

5.—(1) A person who is,

- (a) a member of the Canadian Forces placed on active service pursuant to the *National Defence Act* (Canada); ^{Will of member of forces on active service} R.S.C. 1970, c. N-4
- (b) a member of any other naval, land or air force while on active service; or
- (c) a mariner or seaman when at sea or in the course of a voyage,

may make a will by a writing signed by him or by some other person in his presence and by his direction without any further formality or any requirement of the presence of or attestation or signature by a witness. R.S.O. 1970, c. 499, s. 13 (1, 3).

(2) For the purpose of this section, a certificate purporting to be signed by or on behalf of an officer having custody of the records certifying that he has custody of the records of the force in which a person was serving at the time the will was made, setting out that the person was on active service at that time, is *prima facie* evidence of that fact. ^{Certificate of active service}

(3) For the purposes of this section, if a certificate under subsection 2 is not available, a member of a naval, land or air force is deemed to be on active service after he has taken steps under the orders of a superior officer preparatory to serving with or being attached to or seconded to a component of such a force that has been placed on active service. *New.* ^{Where certificate not available}

6. A testator may make a valid will wholly by his own handwriting and signature, without formality, and without the presence, attestation or signature of a witness. *New.* ^{Holograph wills}

7.—(1) In so far as the position of the signature is concerned, a will, whether holograph or not, is valid if the ^{Position of signature}

signature of the testator made either by him or the person signing for him is placed at, after, following, under or beside or opposite to the end of the will so that it is apparent on the face of the will that the testator intended to give effect by the signature to the writing signed as his will.

Idem

(2) A will is not rendered invalid by the circumstance that,

- (a) the signature does not follow or is not immediately after the end of the will;
- (b) a blank space intervenes between the concluding words of the will and the signature;
- (c) the signature,
 - (i) is placed among the words of a testimonium clause or of a clause of attestation,
 - (ii) follows or is after or under a clause of attestation either with or without a blank space intervening, or
 - (iii) follows or is after, under or beside the name of a subscribing witness;
- (d) the signature is on a side, page or other portion of the paper or papers containing the will on which no clause, paragraph or disposing part of the will is written above the signature; or
- (e) there appears to be sufficient space on or at the bottom of the preceding side, page or other portion of the same paper on which the will is written to contain the signature.

Idem

(3) The generality of subsection 1 is not restricted by the enumeration of circumstances set out in subsection 2, but a signature in conformity with section 4, 5 or 6 or this section does not give effect to,

- (a) a disposition or direction that is underneath the signature or that follows the signature; or
- (b) a disposition or direction inserted after the signature was made. R.S.O. 1970, c. 499, s. 11 (2), *amended*.

8.—(1) A will made by a person who is under the age of ^{Wills by minors} eighteen years is not valid unless at the time of making the will the person,

(a) is or has been married;

(b) is contemplating marriage and the will states that it is made in contemplation of marriage to a named person except that such a will is not valid unless and until the marriage to the named person takes place;

(c) is a member of a component of the Canadian Forces,

(i) that is referred to in the *National Defence Act* ^{R.S.C. 1970, c. N-4} (Canada) as a regular force, or

(ii) while placed on active service under the *National Defence Act* (Canada); or

(d) is a mariner or seaman and at sea or in the course of a voyage.

(2) A certificate purporting to be signed by or on behalf of ^{Certificate of active service} an officer having custody of the records certifying that he has custody of the records of the force in which a person was serving at the time the will was made, setting out that the person was at that time a member of a regular force or was on active service within clause c of subsection 1, is *prima facie* evidence of that fact.

(3) A person who has made a will under subsection 1 may, ^{Revocation} while under the age of eighteen years, revoke the will. R.S.O. 1970, c. 499, ss. 10, 13 (2), *amended*.

9. No appointment made by will in exercise of any power ^{Exercise of appointments by will} is valid unless the appointment is executed in the manner hereinbefore required, and every will executed in the manner hereinbefore required is, so far as respects the execution and attestation thereof, a valid execution of a power of appointment by will, notwithstanding it has been expressly required that a will made in exercise of such power shall be executed with some additional or other form of execution or solemnity. R.S.O. 1970, c. 499, s. 12.

10. A will made in accordance with this Part is valid ^{Publication unnecessary} without other publication. R.S.O. 1970, c. 499, s. 14, *amended*.

Effect of
incompetency
of witness

11. Where a person who attested a will was at the time of its execution or afterward has become incompetent as a witness to prove its execution, the will is not on that account invalid. R.S.O. 1970, c. 499, s. 15, *amended*.

Bequests
to witness
void

12.—(1) Where a will is attested by a person to whom or to whose then spouse a beneficial devise, bequest or other disposition or appointment of or affecting property, except charges and directions for payment of debts, is thereby given or made, the devise, bequest or other disposition or appointment is void so far only as it concerns,

- (a) the person so attesting;
- (b) the spouse; or
- (c) a person claiming under either of them,

but the person so attesting is a competent witness to prove the execution of the will or its validity or invalidity. R.S.O. 1970, c. 499, s. 16, *part, amended*.

Where will
signed for
testator by
another
person

(2) Where a will is signed for the testator by another person in accordance with section 4, to whom or to whose then spouse a beneficial devise, bequest or other disposition or appointment of or affecting property, except charges and directions for payment of debts, is thereby given or made, the devise, bequest, or other disposition is void so far only as it concerns,

- (a) the person so signing;
- (b) the spouse; or
- (c) a person claiming under either of them,

but the will is not invalid for that reason.

Where no
undue
influence

(3) Notwithstanding anything in this section, where a surrogate court is satisfied that neither the person so attesting or signing for the testator nor the spouse exercised any improper or undue influence upon the testator, the devise, bequest or other disposition or appointment is not void. *New*.

Exception

(4) Where a will is attested by at least two persons who are not within subsection 1 or where no attestation is necessary, the devise, bequest or other disposition or appointment is not void under that subsection. R.S.O. 1970, c. 499, s. 16, *part, amended*.

13. Where property is charged by a will with a debt and <sup>Creditor
as witness</sup> a creditor or the spouse of a creditor whose debt is so charged attests a will, the person so attesting, notwithstanding the charge, is a competent witness to prove the execution of the will or its validity or invalidity. R.S.O. 1970, c. 499, s. 17, *amended*.

14. A person is not incompetent as a witness to prove the <sup>Executor
as witness</sup> execution of a will or its validity or invalidity solely because he is an executor. R.S.O. 1970, c. 499, s. 18, *amended*.

15. A will or part of a will is revoked only by, Revocation

- (a) marriage, subject to section 16;
- (b) another will made in accordance with the provisions of this Part;
- (c) a writing,
 - (i) declaring an intention to revoke, and
 - (ii) made in accordance with the provisions of this Part governing making of a will; or
- (d) burning, tearing or otherwise destroying it by the testator or by some person in his presence and by his direction with the intention of revoking it. R.S.O. 1970, c. 499, s. 22, *amended*.

16. A will is revoked by the marriage of the testator except <sup>Revocation
by marriage</sup> where,

- (a) there is a declaration in the will that it is made in contemplation of the marriage;
- (b) the spouse of the testator elects to take under the will, by an instrument in writing signed by the spouse and filed within one year after the testator's death in the office of the Surrogate Clerk for Ontario; or
- (c) the will is made in exercise of a power of appointment of property which would not in default of the appointment pass to the heir, executor or administrator of the testator or to the persons entitled to the estate of the testator if he died intestate. R.S.O. 1970, c. 499, s. 20, *amended*.

Change in
circum-
stances

17.—(1) Subject to subsection 2, a will is not revoked by presumption of an intention to revoke it on the ground of a change in circumstances. R.S.O. 1970, c. 499, s. 21, *amended*.

Exception on
termination
of marriage

(2) Except when a contrary intention appears by the will, where, after the testator makes a will, his marriage is terminated by a judgment absolute of divorce or is declared a nullity,

- (a) a devise or bequest of a beneficial interest in property to his former spouse;
- (b) an appointment of his former spouse as executor or trustee; and
- (c) the conferring of a general or special power of appointment on his former spouse,

are revoked and the will shall be construed as if the former spouse had predeceased the testator. *New*.

Alterations
in will

18.—(1) Subject to subsection 2, unless an alteration that is made in a will after the will has been made is made in accordance with the provisions of this Part governing making of the will, the alteration has no effect except to invalidate words or the effect of the will that it renders no longer apparent.

How
validly
made

(2) An alteration that is made in a will after the will has been made is validly made when the signature of the testator and subscription of witnesses to the signature of the testator to the alteration, or, in the case of a will that was made under section 5 or 6, the signature of the testator, are or is made,

- (a) in the margin or in some other part of the will opposite or near to the alteration; or
- (b) at the end of or opposite to a memorandum referring to the alteration and written in some part of the will. R.S.O. 1970, c. 499, s. 23, *amended*.

Revival

19.—(1) A will or part of a will that has been in any manner revoked is revived only,

- (a) by a will made in accordance with the provisions of this Part; or
- (b) by a codicil that has been made in accordance with the provisions of this Part,

that shows an intention to give effect to the will or part that was revoked, or,

- (c) by re-execution thereof with the required formalities, if any.

(2) Except when a contrary intention is shown, when a will which has been partly revoked and afterward wholly revoked is revived, the revival does not extend to the part that was revoked before the revocation of the whole. R.S.O. 1970, c. 499, s. 24, *amended*. As to part formerly revoked

20.—(1) A conveyance of or other act relating to property that is the subject of a devise, bequest or other disposition, made or done after the making of a will, does not prevent operation of the will with respect to any estate or interest in the property that the testator had power to dispose of by will at the time of his death. R.S.O. 1970, c. 499, s. 25, *amended*. Operation of will as to interest left in testator

(2) Except when a contrary intention appears by the will, where a testator at the time of his death, Rights in place of property devised

- (a) has a right, chose in action or equitable estate or interest that was created by a contract respecting a conveyance of, or other act relating to, property that was the subject of a devise or bequest, made before or after the making of a will;
- (b) has a right to receive the proceeds of a policy of insurance covering loss of or damage to property that was the subject of a devise or bequest, whether the loss or damage occurred before or after the making of the will;
- (c) has a right to receive compensation for the expropriation of property that was the subject of a devise or bequest, whether the expropriation occurred before or after the making of the will; or
- (d) has a mortgage, charge or other security interest in property that was the subject of a devise or bequest, taken by the testator on the sale of such property, whether such mortgage, charge or other security interest was taken before or after the making of the will,

the devisee or donee of that property takes the right, chose in action, equitable estate or interest, right to insurance proceeds or compensation, or mortgage, charge or other security interest of the testator. *New*.

When revived
will deemed
made

21. When a will has been revived in the manner described in section 19, the will shall be deemed to have been made at the time at which it was so revived. R.S.O. 1970, c. 499, s. 19 (10), *amended*.

Will to speak
from death

22. Except when a contrary intention appears by the will, a will speaks and takes effect as if it had been made immediately before the death of the testator with respect to,

- (a) the property of the testator; and
- (b) the right, chose in action or equitable estate or interest under subsection 2 of section 20. R.S.O. 1970, c. 499, s. 26 (1), *amended*.

Disposition
of property
in void
devise

23. Except when a contrary intention appears by the will, property or an interest therein that is comprised or intended to be comprised in a devise or bequest that fails or becomes void by reason of,

- (a) the death of the devisee or donee in the lifetime of the testator; or
- (b) the devise or bequest being disclaimed or being contrary to law or otherwise incapable of taking effect,

is included in the residuary devise or bequest, if any, contained in the will. R.S.O. 1970, c. 499, s. 27, *amended*.

Leasehold
estates under
devise of real
property

24. Except when a contrary intention appears by the will, where a testator devises,

- (a) his real property;
- (b) his real property in a place mentioned in the will, or in the occupation of a person mentioned in the will;
- (c) real property described in a general manner; or
- (d) real property described in a manner that would include a leasehold estate if the testator had no freehold estate which could be described in the manner used,

the devise includes the leasehold estates of the testator or any of them to which the description extends, as well as freehold estates. R.S.O. 1970, c. 499, s. 28, *amended*.

Disposition
of real
property over
which
testator
has power of
appointment
under devise

25.—(1) Except when a contrary intention appears by the will, a general devise of,

- (a) the real property of the testator;
- (b) the real property of the testator,
 - (i) in a place mentioned in the will, or
 - (ii) in the occupation of a person mentioned in the will; or
- (c) real property described in a general manner,

includes any real property, or any real property to which the description extends, which he has power to appoint in any manner he thinks proper and operates as an execution of the power.

(2) Except when a contrary intention appears by the will, a bequest of,

Disposition of personal property over which testator has power of appointment under bequest

- (a) the personal property of the testator; or
- (b) personal property described in a general manner,

includes any personal property, or any personal property to which the description extends, which he has power to appoint in any manner he thinks proper and operates as an execution of the power. R.S.O. 1970, c. 499, s. 29, *amended*.

26. Except when a contrary intention appears by the will, where real property is devised to a person without words of limitation, the devise passes the fee simple or the whole of any other estate or interest that the testator had power to dispose of by will in the real property. R.S.O. 1970, c. 499, s. 30, *amended*.

Real property passing under devise without words of limitation

27. Except when a contrary intention appears by the will, where property is devised or bequeathed to the "heir" or "heirs" of the testator or of another person, the words "heir" or "heirs" mean the person to whom the beneficial interest in the property would have gone under the law of Ontario if the testator or the other person died intestate. R.S.O. 1970, c. 499, s. 31, *amended*.

Meaning of "heir" in devise of property

28.—(1) Subject to subsection 2, in a devise or bequest of property,

Import of words "die without issue", etc.

- (a) the words,
 - (i) "die without issue",

(ii) “die without leaving issue”, or

(iii) “have no issue”; or

- (b) other words importing either a want or failure of issue of a person in his lifetime or at the time of his death or an indefinite failure of his issue,

mean a want or failure of issue in the lifetime or at the time of death of that person, and do not mean an indefinite failure of his issue unless a contrary intention appears by the will.

Cases to which Part not to extend

(2) This Part does not extend to cases where the words defined in subsection 1 import,

(a) if no issue described in a preceding gift be born; or

(b) if there be no issue who live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to that issue.
R.S.O. 1970, c. 499, s. 32, *amended*.

Devise to trustee or executor

29. Except when there is devised to a trustee expressly or by implication an estate for a definite term of years absolute or determinable or an estate of freehold, a devise of real property to a trustee or executor passes the fee simple or the whole of any other estate or interest that the testator had power to dispose of by will in the real property. R.S.O. 1970, c. 499, s. 33, *amended*.

When devise to trustee to pass whole estate beyond what is requisite for trust

30. Where real property is devised to a trustee without express limitation of the estate to be taken by him and the beneficial interest in the real property or in the surplus rents and profits,

(a) is not given to a person for life; or

(b) is given to a person for life but the purpose of the trust may continue beyond his life,

the devise vests in the trustee the fee simple or the whole of any other legal estate that the testator had power to dispose of by will in the real property and not an estate determinable when the purposes of the trust are satisfied. R.S.O. 1970, c. 499, s. 34, *amended*.

Substitutional gifts

31. Except when a contrary intention appears by the will, where a devise or bequest is made to a child, grandchild, brother or sister of the testator who dies before the testator, either before or after the testator makes his will,

and leaves a spouse or issue surviving the testator, the devise or bequest does not lapse but takes effect as if it had been made directly to the persons among whom and in the shares in which the estate of that person would have been divisible,

- (a) if that person had died immediately after the death of the testator;
- (b) if that person had died intestate;
- (c) if that person had died without debts; and
- (d) if section 46 had not been passed. R.S.O. 1970, c. 499, s. 36, *amended*.

32.—(1) Where a person dies possessed of, or entitled to, or under a general power of appointment by his will disposes of, an interest in freehold or leasehold property which, at the time of his death, is subject to a mortgage, and the deceased has not, by will, deed or other document, signified a contrary or other intention,

Primary liability of real property to satisfy mortgage

- (a) the interest is, as between the different persons claiming through the deceased, primarily liable for the payment or satisfaction of the mortgage debt; and
- (b) every part of the interest, according to its value, bears a proportionate part of the mortgage debt on the whole interest.

(2) A testator does not signify a contrary or other intention within subsection 1 by,

Consequence of general direction to pay debts out of personality or residue

- (a) a general direction for the payment of debts or of all the debts of the testator out of his personal estate, his residuary real or personal estate or his residuary real estate; or
- (b) a charge of debts upon that estate,

unless he further signifies that intention by words expressly or by necessary implication referring to all or some part of the mortgage debt.

(3) Nothing in this section affects a right of a person entitled to the mortgage debt to obtain payment or satisfaction either out of the other assets of the deceased or otherwise.

Saving of mortgagee's rights

Interpre-
tation

(4) In this section, “mortgage” includes an equitable mortgage, and any charge whatsoever, whether equitable, statutory or of other nature, including a lien or claim upon freehold or leasehold property for unpaid purchase money, and “mortgage debt” has a meaning similarly extended. R.S.O. 1970, c. 499, s. 37, *amended*.

Undisposed
of residue

33.—(1) Where a person dies having by will appointed a person executor, the executor is a trustee of any residue not expressly disposed of, for the person or persons, if any, who would be entitled to that residue in the event of intestacy in respect of it, unless it appears by the will that the person so appointed executor was intended to take the residue beneficially.

Where no
person
entitled
to residue

(2) Nothing in this section prejudices any right in respect of any residue not expressly disposed of to which, if this Part had not been passed, an executor would have been entitled where there is not any person who would be entitled to the testator’s estate under Part II in case of an intestacy. R.S.O. 1970, c. 470, s. 55, *amended*.

CONFLICT OF LAWS

Interpre-
tation

34. In sections 36 to 41,

- (a) an interest in land includes a leasehold estate as well as a freehold estate in land, and any other estate or interest in land whether the estate or interest is real property or is personal property;
- (b) an interest in movables includes an interest in a tangible or intangible thing other than land, and includes personal property other than an estate or interest in land; R.S.O. 1970, c. 499, s. 19 (1).
- (c) “internal law” in relation to any place excludes the choice of law rules of that place. *New*.

Wills made
in or out
of Ontario

35. Sections 36 to 41 apply to a will made either in or out of Ontario. R.S.O. 1970, c. 499, s. 19 (4), *amended*.

Formalities,
re interests
in land

36.—(1) The manner and formalities of making a will, and its essential validity and effect, so far as it relates to an interest in land, are governed by the internal law of the place where the land is situated.

(2) Subject to other provisions of this Part, the manner^{re interests in movables} and formalities of making a will, and its essential validity and effect, so far as it relates to an interest in movables, are governed by the internal law of the place where the testator was domiciled at the time of his death. R.S.O. 1970, c. 499, s. 19 (2, 3), *amended*.

37.—(1) As regards the manner and formalities of making^{Formalities re interests in movables or in land} a will of an interest in movables or in land, a will is valid and admissible to probate if at the time of its making it complied with the internal law of the place where,

- (a) the will was made;
- (b) the testator was then domiciled;
- (c) the testator then had his habitual residence; or
- (d) the testator then was a national if there was in that place one body of law governing the wills of nationals. R.S.O. 1970, c. 499, s. 19 (4), *amended*.

(2) As regards the manner and formalities of making a^{Idem} will of an interest in movables or in land, the following are properly made,

- (a) a will made on board a vessel or aircraft of any description, if the making of the will conformed to the internal law in force in the place with which, having regard to its registration (if any) and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;
- (b) a will so far as it revokes a will which under sections 34 to 42 would be treated as properly made or revokes a provision which under those sections would be treated as comprised in a properly made will, if the making of the later will conformed to any law by reference to which the revoked will or provision would be treated as properly made; and
- (c) a will so far as it exercises a power of appointment, if the making of the will conforms to the law governing the essential validity of the power. *New*.

38. A change of domicile of the testator occurring after^{Change of domicile} a will is made does not render it invalid as regards the

manner and formalities of its making or alter its construction. R.S.O. 1970, c. 499, s. 19 (5).

Construction
of will

39. Nothing in sections 34 to 42 precludes resort to the law of the place where the testator was domiciled at the time of making a will in aid of its construction as regards an interest in land or an interest in movables. R.S.O. 1970, c. 499, s. 19 (6).

Movables
used in
relation
to land

40. Where the value of a thing that is movable consists mainly or entirely in its use in connection with a particular parcel of land by the owner or occupier of the land, succession to an interest in the thing under a will is governed by the law that governs succession to the interest in the land. R.S.O. 1970, c. 499, s. 19 (7), *amended*.

Where law
outside
Ontario to be
applied to
will

41.—(1) Where, whether under sections 34 to 42 or not, a law in force outside Ontario is to be applied in relation to a will, any requirement of that law that,

(a) special formalities are to be observed by testators answering a particular description; or

(b) witnesses to the making of a will are to possess certain qualifications,

shall be treated, notwithstanding any rule of that law to the contrary, as a formal requirement only.

Formal
requirements
of law

(2) In determining for the purposes of sections 34 to 40 whether or not the making of a will conforms to a particular law, regard shall be had to the formal requirements of that law at the time the will was made, but account shall be taken of an alteration of law affecting wills made at that time if the alteration enables the will to be treated as properly made. *New*.

INTERNATIONAL WILLS

Effective
date

42.—(1) In this section,

(a) “convention” means the convention providing a uniform law on the form of international will, a copy of which is set out in the Schedule to this section;

(b) “effective date” means the latest of,

(i) the day on which, in accordance with Article XI of the convention, the convention enters into force, or

- (ii) the day that is six months after the date on which the Government of Canada submits to the Depositary Government under the convention a declaration that the convention extends to Ontario.

(2) On, from and after the effective date the convention is in force in Ontario and applies to wills as law of Ontario and the rules regarding an international will set out in the Annex to the convention are law in Ontario. Convention on form of international will

(3) All members of the Law Society of Upper Canada, other than student members, are designated as persons authorized to act in connection with international wills. Persons authorized under convention

(4) Nothing in this section detracts from or affects the validity of a will that is valid under the laws in force in Ontario other than this section. Validity of wills under other laws

(5) The Attorney General shall request the Government of Canada to submit a declaration to the Depositary Government under the convention, declaring that the convention extends to Ontario. Accession to convention

(6) As soon as the effective date is determined, the Attorney General shall publish in *The Ontario Gazette* a notice indicating the date that is the effective date for the purposes of this section. Notice of effective date

SCHEDULE

Convention Providing a Uniform Law on The Form of an International Will

The States signatory to the present Convention,

DESIRING to provide to a greater extent for the respecting of last wills by establishing an additional form of will hereinafter to be called an "international will" which, if employed, would dispense to some extent with the search for the applicable law;

HAVE RESOLVED to conclude a Convention for this purpose and have agreed upon the following provisions:

Article I

1. Each Contracting Party undertakes that not later than six months after the date of entry into force of this Convention in respect of that Party it shall introduce into its law the rules regarding an international will set out in the Annex to this Convention.

2. Each Contracting Party may introduce the provisions of the Annex into its law either by reproducing the actual text, or by translating it into its official language or languages.

3. Each Contracting Party may introduce into its law such further provisions as are necessary to give the provisions of the Annex full effect in its territory.

4. Each Contracting Party shall submit to the Depositary Government the text of the rules introduced into its national law in order to implement the provisions of this Convention.

Article II

1. Each Contracting Party shall implement the provisions of the Annex in its law, within the period provided for in the preceding article, by designating the persons who, in its territory, shall be authorized to act in connection with international wills. It may also designate as a person authorized to act with regard to its nationals its diplomatic or consular agents abroad in so far as the local law does not prohibit it.

2. The Party shall notify such designation, as well as any modifications thereof, to the Depositary Government.

Article III

The capacity of the authorized person to act in connection with an international will, if conferred in accordance with the law of a Contracting Party, shall be recognized in the territory of the other Contracting Parties.

Article IV

The effectiveness of the certificate provided for in Article 10 of the Annex shall be recognized in the territories of all Contracting Parties.

Article V

1. The conditions requisite to acting as a witness of an international will shall be governed by the law under which the authorized person was designated. The same rule shall apply as regards an interpreter who is called upon to act.

2. Nonetheless no one shall be disqualified to act as a witness of an international will solely because he is an alien.

Article VI

1. The signature of the testator, of the authorized person, and of the witnesses to an international will, whether on the will or on the certificate, shall be exempt from any legalization or like formality.

2. Nonetheless, the competent authorities of any Contracting Party may, if necessary, satisfy themselves as to the authenticity of the signature of the authorized person.

Article VII

The safekeeping of an international will shall be governed by the law under which the authorized person was designated.

Article VIII

No reservation shall be admitted to this Convention or to its Annex.

Article IX

1. The present Convention shall be open for signature at Washington from October 26, 1973, until December 31, 1974.

2. The Convention shall be subject to ratification.

3. Instruments of ratification shall be deposited with the Government of the United States of America, which shall be the Depositary Government.

Article X

1. The Convention shall be open indefinitely for accession.

2. Instruments of accession shall be deposited with the Depositary Government.

Article XI

1. The present Convention shall enter into force six months after the date of deposit of the fifth instrument of ratification or accession with the Depositary Government.

2. In the case of each State which ratifies this Convention or accedes to it after the fifth instrument of ratification or accession has been deposited, this Convention shall enter into force six months after the deposit of its own instrument of ratification or accession.

Article XII

1. Any Contracting Party may denounce this Convention by written notification to the Depositary Government.

2. Such denunciation shall take effect twelve months from the date on which the Depositary Government has received the notification, but such denunciation shall not affect the validity of any will made during the period that the Convention was in effect for the denouncing State.

Article XIII

1. Any State may, when it deposits its instrument of ratification or accession or at any time thereafter, declare, by a notice addressed to the Depositary Government, that this Convention shall apply to all or part of the territories for the international relations of which it is responsible.

2. Such declaration shall have effect six months after the date on which the Depositary Government shall have received notice thereof or, if at the end of such period the Convention has not yet come into force, from the date of its entry into force.

3. Each Contracting Party which has made a declaration in accordance with paragraph 1 of this Article may, in accordance with Article XII,

denounce this Convention in relation to all or part of the territories concerned.

Article XIV

1. If a State has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, it may at the time of signature, ratification, or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.

2. These declarations shall be notified to the Depositary Government and shall state expressly the territorial units to which the Convention applies.

Article XV

If a Contracting Party has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, any reference to the internal law of the place where the will is made or to the law under which the authorized person has been appointed to act in connection with international wills shall be construed in accordance with the constitutional system of the Party concerned.

Article XVI

1. The original of the present Convention, in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.

2. The Depositary Government shall give notice to the signatory and acceding States, and to the International Institute for the Unification of Private Law, of:

- (a) any signature;
- (b) the deposit of any instrument of ratification or accession;
- (c) any date on which this Convention enters into force in accordance with Article XI;
- (d) any communication received in accordance with Article I, paragraph 4;
- (e) any notice received in accordance with Article II, paragraph 2;
- (f) any declaration received in accordance with Article XIII, paragraph 2, and the date on which such declaration takes effect;
- (g) any denunciation received in accordance with Article XII, paragraph 1, or Article XIII, paragraph 3, and the date on which the denunciation takes effect;
- (h) any declaration received in accordance with Article XIV, paragraph 2, and the date on which the declaration takes effect.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized to that effect, have signed the present Convention.

DONE at Washington this twenty-sixth day of October, one thousand nine hundred and seventy-three.

ANNEX

Uniform Law on the Form of an International Will

Article 1

1. A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the provisions set out in Articles 2 to 5 hereinafter.

2. The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

Article 2

This law shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

Article 3

1. The will shall be made in writing.
2. It need not be written by the testator himself.
3. It may be written in any language, by hand or by any other means.

Article 4

1. The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof.

2. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

Article 5

1. In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.

2. When the testator is unable to sign, he shall indicate the reason therefor to the authorized person who shall make note of this on the will. Moreover, the testator may be authorized by the law under which the authorized person was designated to direct another person to sign on his behalf.

3. The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

Article 6

1. The signatures shall be placed at the end of the will.
2. If the will consists of several sheets, each sheet shall be signed by the testator or, if he is unable to sign, by the person signing on his behalf or,

if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

Article 7

1. The date of the will shall be the date of its signature by the authorized person.
2. This date shall be noted at the end of the will by the authorized person.

Article 8

In the absence of any mandatory rule pertaining to the safekeeping of the will, the authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator the place where he intends to have his will kept shall be mentioned in the certificate provided for in Article 9.

Article 9

The authorized person shall attach to the will a certificate in the form prescribed in Article 10 establishing that the obligations of this law have been complied with.

Article 10

The certificate drawn up by the authorized person shall be in the following form or in a substantially similar form:

CERTIFICATE

(Convention of October 26, 1973)

1. I,(name, address and capacity),
a person authorized to act in connection with international wills

2. Certify that on(date) at(place)

3. (testator) (name, address, date and
place of birth)

in my presence and that of the witnesses

4. (a) (name, address, date and
place of birth)

(b) (name, address, date and
place of birth)

has declared that the attached document is his will and that he
knows the contents thereof.

5. I furthermore certify that:

6. (a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged his
signature previously affixed.

*(2) following a declaration of the testator stating that he was
unable to sign his will for the following reason.....

—I have mentioned this declaration on the will

*—the signature has been affixed by (name, address)

7. (b) the witnesses and I have signed the will;
8. *(c) each page of the will has been signed by and numbered;
9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;
10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;
11. *(f) the testator has requested me to include the following statement concerning the safekeeping of his will:
12. PLACE
13. DATE
14. SIGNATURE and, if necessary, SEAL

*To be completed if appropriate.

Article 11

The authorized person shall keep a copy of the certificate and deliver another to the testator.

Article 12

In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under this Law.

Article 13

The absence or irregularity of a certificate shall not affect the formal validity of a will under this Law.

Article 14

The international will shall be subject to the ordinary rules of revocation of wills.

Article 15

In interpreting and applying the provisions of this law, regard shall be had to its international origin and to the need for uniformity in its interpretation.

REPEALS

43.—(1) Except as provided in subsection 2, the following ^{Repeals} are repealed:

- (a) *The Wills Act*, being chapter 499 of the Revised Statutes of Ontario, 1970;

(b) chapter 3 of the Statutes of Ontario, 1971;

(c) paragraph 36 of the Schedule to chapter 98 of the Statutes of Ontario, 1971; and

(d) section 55 of *The Trustee Act*, being chapter 470 of the Revised Statutes of Ontario, 1970.

Exception

(2) The enactments repealed by subsection 1 continue in force as if unrepealed in respect of wills made by a testator who died before the 1st day of September, 1977.

Application
of Part

44. This Part applies to wills made before, on or after the 1st day of September, 1977 where the testator has not died before that date.

PART II

INTESTATE SUCCESSION

Intestacy
where spouse
and no issue

45. Where a person dies intestate in respect of property and is survived by a spouse and not survived by issue, the spouse is entitled to the property absolutely. *New.*

Preferential
share of
spouse
where issue

46.—(1) Subject to subsection 3, where a person dies intestate in respect of property having a net value of not more than \$75,000 and is survived by a spouse and issue, the spouse is entitled to the property absolutely. R.S.O. 1970, c. 179, s. 11 (1); 1973, c. 18, s. 1 (1), *amended*.

Idem

(2) Subject to subsection 3, where a person dies intestate in respect of property having a net value of more than \$75,000 and is survived by a spouse and issue, the spouse is entitled to \$75,000 absolutely. R.S.O. 1970, c. 129, s. 11 (2); 1973, c. 18, s. 1 (2), *amended*.

Idem

(3) Notwithstanding subsection 1, where a person dies testate as to some property and intestate as to other property and is survived by a spouse and issue, and,

(a) where the spouse is entitled under the will to nothing or to property having a net value of less than \$75,000, the spouse is entitled out of the intestate property to the amount by which \$75,000 exceeds the net value of the property, if any, to which the spouse is entitled under the will;

(b) where the spouse is entitled under the will to property having a net value of more than \$75,000, subsections 1 and 2 do not apply. *New.*

(4) In this section, "net value" means the value of the ^{Interpre-} property after payment of the charges thereon and the debts, ^{tation} funeral expenses and expenses of administration, including succession duty. R.S.O. 1970, c. 129, s. 11 (5).

47.—(1) Where a person dies intestate in respect of ^{Residue:} property and leaves a spouse and one child, the spouse ^{spouse and} is entitled to one-half of the residue of the property ^{one child} after payment under section 46, if any.

(2) Where a person dies intestate in respect of property ^{Idem:} and leaves a spouse and more than one child, the spouse ^{spouse and} is entitled to one-third of the residue of the property ^{two or more} after payment under section 46, if any. ^{children}

(3) Where a child has died leaving issue living at the ^{Idem:} date of the intestate's death, the spouse's share shall ^{issue of} be the same as if the child had been living at that date. ^{predeceased} ^{children} R.S.O. 1970, c. 129, s. 31, *part, amended.*

48.—(1) Subject to subsection 2, where a person dies ^{Issue} intestate in respect of property and leaves issue surviving him, the property shall be distributed, subject to the rights of the spouse, if any, equally among his issue who are of the nearest degree in which there are issue surviving him.

(2) Where any issue of the degree entitled under sub- ^{Share of} section 1 has predeceased the intestate, the share of such ^{predeceasing} issue shall be distributed among his issue in the manner set out in subsection 1 and the share devolving upon any issue of that and subsequent degrees who predecease the intestate shall be similarly distributed.

(3) Where a person dies intestate in respect of property ^{Parents} and leaves no spouse or issue, the property shall be distributed between the parents of the deceased equally or, where there is only one parent surviving the deceased, to that parent absolutely.

(4) Where a person dies intestate in respect of property ^{Brothers and} and there is no surviving spouse, issue or parent, the ^{sisters} property shall be distributed among the surviving brothers and sisters of the intestate equally, and if any brother or sister predeceases the intestate, the share of the deceased brother or sister shall be distributed among his or her children equally.

(5) Where a person dies intestate in respect of property ^{Nephews and} and there is no surviving spouse, issue, parent, brother or ^{nieces}

sister, the property shall be distributed among the nephews and nieces of the intestate equally without representation.

Next of
kin

(6) Where a person dies intestate in respect of property and there is no surviving spouse, issue, parent, brother, sister, nephew or niece, the property shall be distributed among the next of kin of equal degree of consanguinity to the intestate equally without representation. R.S.O. 1970, c. 129, s. 31, *part, amended*.

Escheat

(7) Where a person dies intestate in respect of property and there is no surviving spouse, issue, parent, brother, sister, nephew, niece or next of kin, the property becomes the property of the Crown, and *The Escheats Act* applies.

R.S.O. 1970,
c. 149

Degrees of
kindred

(8) For the purposes of subsection 6, degrees of kindred shall be computed by counting upward from the deceased to the nearest common ancestor and then downward to the relative, and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree.

Descendants
conceived
but unborn

(9) For the purposes of this section, descendants and relatives of the deceased conceived before and born alive after the death of the deceased shall inherit as if they had been born in the lifetime of the deceased and had survived him. *New*.

Abolition
of curtesy

49. The common law right of a widower to curtesy is hereby abolished.

Repeal of
R.S.O. 1970,
c. 129, ss. 8, 10,
11, 12, 13, 30, 31,
31a, 32

50.—(1) Sections 8 and 10, sections 11 and 12, as amended by the Statutes of Ontario, 1973, chapter 18, sections 1 and 2, sections 13, 30 and 31, section 31a, as enacted by the Statutes of Ontario, 1973, chapter 18, section 3, and section 32 of *The Devolution of Estates Act*, being chapter 129 of the Revised Statutes of Ontario, 1970, are repealed.

R.S.O. 1970,
c. 129, s. 28,
re-enacted

(2) Section 28 of the said Act is repealed and the following substituted therefor:

Search
for
children
born
outside
marriage

28.—(1) A personal representative shall make reasonable inquiries for persons who may be entitled by virtue of a relationship traced through a birth outside marriage.

Liability
of
personal
representa-
tive

(2) A personal representative is not liable for failing to distribute property to a person who is entitled by virtue of a relationship traced through a birth outside marriage where,

1977, c. . . .

(a) the parentage is not recognized in law under *The Children's Law Reform Act, 1977*; or

- (b) he makes the inquiries referred to in subsection 1 and the entitlement of the person entitled was not known to the personal representative at the time of the distribution.

(3) Nothing in this section prejudices the right of any ^{Saving rights} person to follow the property, or any property representing it, into the hands of any person other than a purchaser in good faith and for value, except that where the parentage of a person born outside marriage is not recognized in law under *The Children's Law Reform Act, 1977* until after the ^{1977, c. . . .} death of the deceased, a person entitled by virtue of a relationship traced through the birth is entitled to follow only property that is distributed after the personal representative has actual notice of an application to establish the parentage or of the facts giving rise to a presumption of parentage.

51.—(1) Section 29 of *The Conveyancing and Law of Property Act*, being chapter 85 of the Revised Statutes ^{R.S.O. 1970, c. 85, s. 29, repealed} of Ontario, 1970, is repealed.

(2) Section 30 of the said Act is amended by striking ^{R.S.O. 1970, c. 85, s. 30, amended} out "A tenant by the curtesy" in the first line.

52. The enactments repealed or amended by sections ^{Exception} 50 and 51 continue in force as if unrepealed or unamended in respect of a death occurring before the 1st day of September, 1977.

53. This Part applies to an intestacy upon a death ^{Application} occurring on or after the 1st day of September, 1977.

PART III

SURVIVORSHIP

54.—(1) Where two or more persons die at the same ^{Survivorship as to succession} time or in circumstances rendering it uncertain which of them survived the other or others, the property of each person, or any property of which he is competent to dispose, shall be disposed of as if he had survived the other or others. R.S.O. 1970, c. 45, s. 1 (1).

(2) Unless a contrary intention appears, where two or more ^{Simultaneous death of joint tenants} persons hold legal or equitable title to property as joint tenants, or with respect to a joint account, with each other, and all of them die at the same time or in circumstances rendering it uncertain which of them survived the other

or others, each person shall be deemed, for the purposes of subsection 1, to have held as tenant in common with the other or with each of the others in that property.

Provision in will for substitute representative

(3) Where a will contains a provision for a substitute personal representative operative if an executor designated in the will,

- (a) dies before the testator;
- (b) dies at the same time as the testator; or
- (c) dies in circumstances rendering it uncertain which of them survived the other,

and the designated executor dies at the same time as the testator or in circumstances rendering it uncertain which of them survived the other, then, for the purpose of probate, the case for which the will provides shall be deemed to have occurred. *New.*

Proceeds of insurance
R.S.O. 1970,
c. 224

(4) The proceeds of a policy of insurance shall be paid in accordance with sections 190 and 268 of *The Insurance Act* and thereafter this Part applies to their disposition. R.S.O. 1970, c. 454, s. 1 (2); 1972, c. 43, s. 1, *amended*.

Repeals

55.—(1) *The Survivorship Act*, being chapter 454, of the Revised Statutes of Ontario, 1970, and *The Survivorship Amendment Act, 1972*, being chapter 43, are repealed.

Exception

(2) The enactment repealed by subsection 1 continues in force as if unrepealed in respect of deaths occurring before the 1st day of September, 1977.

Application of Part

56. This part applies in respect of deaths occurring on or after the 1st day of September, 1977.

PART IV

SUPPORT OF DEPENDANTS

Interpre-
tation

57. In this Part,

- (a) “child” means a child as defined in clause *a* of subsection 1 of section 1 and includes a grand-child and a person whom the deceased has demonstrated a settled intention to treat as a child of his family but does not include a child placed in a

foster home for consideration by a person having lawful custody;

(b) "common law spouse" means either of a man and a woman who, not being married to each other, had been cohabiting immediately before the death of one of them,

(i) continuously for a period of not less than five years, or

(ii) in a relationship of some permanence where there is a child born of whom they are the natural parents;

(c) "court" means the surrogate court having jurisdiction to grant letters probate or letters of administration in the estate of the deceased;

(d) "dependant" means,

(i) the spouse or common law spouse of the deceased,

(ii) a parent of the deceased,

(iii) a child of the deceased, or

(iv) a brother or sister of the deceased,

to whom the deceased was providing support or was under a legal obligation to provide support immediately before his death;

(e) "letters probate" and "letters of administration" include letters probate, letters of administration or other legal documents purporting to be of the same legal nature granted by a court in another jurisdiction and resealed in this province;

(f) "parent" includes a grandparent and a person who has demonstrated a settled intention to treat the deceased as a child of his family, but does not include a person in whose home the deceased was placed as a foster child for consideration by a person having lawful custody;

(g) "spouse" includes a person whose marriage to the deceased was terminated or declared a nullity. R.S.O. 1970, c. 126, s. 1, *amended*.

Order for
support

58.—(1) Where a deceased, whether testate or intestate, has not made adequate provision for the proper support of his dependants or any of them, the court, on application, or public agency, may order that such provision as it considers adequate be made out of the estate of the deceased for the proper support of the dependants or any of them. R.S.O. 1970, c. 126, s. 2 (1), *amended*.

Applicants

(2) An application for an order under subsection 1 may be made by the dependant or on behalf of a dependant by,

(a) the Ministry of Community and Social Services in the name of the Minister;

(b) a municipal corporation, including a metropolitan, district or regional municipality but not including an area municipality thereof; or

(c) a children's aid society,

where the Ministry, municipality or society is providing an allowance or benefit in respect of the support of the dependant.

Idem

(3) The adequacy of provision for support under subsection 1 shall be determined as of the date of the hearing of the application. *New*.

Suspensory
order

59. On an application by or on behalf of the dependants or any of them, the court may make an order suspending in whole or in part the administration of the deceased's estate, for such time and to such extent as the court may decide. *New*.

Application

60.—(1) An application under this Part may be made to the court by originating notice of motion in accordance with the practice of the court. R.S.O. 1970, c. 126, s. 4 (1), *amended*.

Idem

(2) Where an application for an order under section 58 is made by or on behalf of any dependant,

(a) it may be dealt with by the court as; and

(b) in so far as the question of limitation is concerned, it shall be deemed to be,

an application on behalf of all persons who might apply. *New*.

Limitation
period

61.—(1) Subject to subsection 2, no application for an order under section 58 may be made after six months from

the grant of letters probate of the will or of letters of administration.

(2) The court, if it considers it proper, may allow an application to be made at any time as to any portion of the estate remaining undistributed at the date of the application. R.S.O. 1970, c. 126, s. 4 (2), *amended*. Exception

62.—(1) Upon the hearing of an application under this Part the court, Consideration on application

(a) shall inquire into and consider all the circumstances of the application, including,

- (i) the assets and means of the dependant,
- (ii) the capacity of the dependant to provide for his or her own support,
- (iii) the age and the physical and mental health of the dependant,
- (iv) the needs of the dependant, in determining which the court may have regard to the accustomed standard of living,
- (v) the proximity and duration of the dependant's relationship with the deceased,
- (vi) the contributions made by the dependant to the deceased's welfare, including indirect and non-financial contributions,
- (vii) the contributions made by the dependant to the acquisition, maintenance and improvement of the deceased's property, business or occupation,
- (viii) whether the dependant has a legal obligation to provide support for another person,
- (ix) where the dependant is a child, his or her aptitude for and reasonable prospects of obtaining an education,
- (x) where the dependant is a child of the age of sixteen years or more, his or her withdrawal from parental control;
- (xi) where the dependant is the spouse of the deceased,

1. cohabitation by the spouse with another person during the lifetime of the deceased, or
 2. a course of conduct during the lifetime of the deceased that is an obvious and gross repudiation of the relationship,
- (xii) the circumstances of the deceased at the time of death,
 - (xiii) any agreement between the deceased and the dependant,
 - (xiv) any previous distribution or division of property made by the deceased in favour of the dependant by gift or agreement or under court order, and
 - (xv) the claims that any other person may have as a dependant;
- (b) in addition to the evidence adduced by the parties appearing, may direct such other evidence to be given as the court considers necessary or proper; and
 - (c) may accept such evidence as the court considers proper of the deceased's reasons, so far as ascertainable,
 - (i) for making the dispositions made by his will, or
 - (ii) for not making adequate provision for a dependant,

including any statement in writing signed by the deceased. R.S.O. 1970, c. 126, s. 6, *amended*.

Idem

(2) In estimating the weight to be given to a statement referred to in clause *c* of subsection 1, the court shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement. *New*.

Conditions
and
restrictions

63.—(1) In any order making provision for support of a dependant, the court may impose such conditions and restrictions as the court considers appropriate.

(2) Provision may be made out of income or capital or ^{Contents of order} both and an order may provide for one or more of the following, as the court considers appropriate,

- (a) an amount payable annually or otherwise whether for an indefinite or limited period or until the happening of a specified event;
- (b) a lump sum to be paid or held in trust;
- (c) any specified property to be transferred or assigned to or in trust for the benefit of the dependant, whether absolutely, for life or for a term of years;
- (d) the possession or use of any specified property by the dependant for life or such period as the court considers appropriate;
- (e) a lump sum payment to supplement or replace periodic payments;
- (f) the securing of payment under an order by a charge on property or otherwise;
- (g) the payment of a lump sum or of increased periodic payments to enable a dependant spouse or child to meet debts reasonably incurred for his or her own support prior to an application under this Part;
- (h) that all or any of the moneys payable under the order be paid to an appropriate person or agency for the benefit of the dependant;
- (i) the payment to a public agency referred to in subsection 2 of section 58 of any amount in reimbursement for an allowance or benefit granted in respect of the support of the dependant, including an amount in reimbursement for an allowance paid or benefit provided before the date of the order. R.S.O. 1970, c. 126, s. 2, *amended*.

(3) Where a transfer or assignment of property is ordered, ^{Idem} the court may,

- (a) give all necessary directions for the execution of the transfer or assignment by the executor or administrator or such other person as the court may direct;
or
- (b) grant a vesting order.

(4) An order under this section may be made notwithstanding any agreement or waiver to the contrary. ^{Agreement or waiver} *New.*

Notice to
parties
before order

(5) The court shall not make any order under this section until it is satisfied upon oath that all persons who are or may be interested in or affected by the order have been served with notice of the application as provided by the rules of court, and every such person is entitled to be present and to be heard in person or by counsel at the hearing. R.S.O. 1970, c. 126, s. 5.

Exception

(6) Notwithstanding subsection 5, where, in the opinion of the court,

- (a) every reasonable effort has been made to serve those entitled to notice; or
- (b) after every reasonable effort has been made, it is not possible to identify one or more of the persons entitled to notice,

the court may dispense with the requirement of notice in respect of any person who has not been served. *New.*

Interim
order

64. Where an application is made under this Part and the applicant is in need of and entitled to support but any or all of the matters referred to in section 62 or 63 have not been ascertained by the court, the court may make such interim order under section 63 as it considers appropriate. 1973, c. 131, s. 1, *part.*

Inquiries
and further
orders

65. Where an order has been made under this Part, the court at any subsequent date may,

- (a) inquire whether the dependant benefited by the order has become entitled to the benefit of any other provision for his support;
- (b) inquire into the adequacy of the provision ordered; and
- (c) discharge, vary or suspend the order, or make such other order as the court considers appropriate in the circumstances. 1973, c. 131, s. 1, *part, amended.*

Further
powers of
court

66. The court may at any time,

- (a) fix a periodic payment or lump sum to be paid by a legatee, devisee or beneficiary under an intestacy to represent, or in commutation of, such proportion of the sum ordered to be paid as falls upon the portion of the estate in which he is interested;

(b) relieve such portion of the estate from further liability; and

(c) direct,

(i) the manner in which such periodic payment is to be secured, or

(ii) to whom such lump sum is to be paid and the manner in which it is to be dealt with for the benefit of the person to whom the commuted payment is payable. *New.*

67.—(1) Where an application is made and notice thereof ^{Distribution stayed} is served on the personal representative of the deceased, he shall not, after service of the notice upon him, unless all persons entitled to apply consent or the court otherwise orders, proceed with the distribution of the estate until the court has disposed of the application. R.S.O. 1970, c. 126, s. 4 (3).

(2) Nothing in this Part prevents a personal representative ^{Exception} from making reasonable advances for support to dependants who are beneficiaries.

(3) Where a personal representative distributes any por- ^{Liability of personal representative} tion of the estate in violation of subsection 1, if any provision for support is ordered by the court to be made out of the estate, the personal representative is personally liable to pay the amount of the distribution to the extent that such provision or any part thereof ought, pursuant to the order or this Part, to be made out of the portion of the estate distributed. *New.*

68.—(1) Subject to subsection 2, the incidence of any ^{Incidence of provision ordered} provision for support ordered shall fall rateably upon that part of the deceased's estate to which the jurisdiction of the court extends.

(2) The court may order that the provision for support ^{Idem} be made out of and charged against the whole or any portion of the estate in such proportion and in such manner as to the court seems proper. *New.*

69. The court may give such further directions as it con- ^{Further directions} siders necessary for the purpose of giving effect to an order. *New.*

Certified
copy of
order filed
with the
clerk of
the court

70.—(1) A certified copy of every order made under this Part shall be filed with the clerk of the court out of which the letters probate or letters of administration issued.

Idem

(2) A memorandum of the order shall be endorsed on or annexed to the copy, in the custody of the clerk, of the letters probate or letters of administration, as the case may be.
New.

Property
devised

71. Where a deceased,

(a) has, in his lifetime, in good faith and for valuable consideration, entered into a contract to devise or bequeath any property; and

(b) has by his will devised or bequeathed that property in accordance with the provisions of the contract,

the property is not liable to the provisions of an order made under this Part except to the extent that the value of the property in the opinion of the court exceeds the consideration therefor. R.S.O. 1970, c. 126, s. 8, *amended*.

Value of
certain
transactions
deemed part
of estate

72.—(1) Subject to section 71, for the purpose of this Part, the capital value of the following transactions effected by a deceased before his death, whether benefiting his dependant or any other person, shall be included as testamentary dispositions as of the date of the death of the deceased and shall be deemed to be part of his net estate for purposes of ascertaining the value of his estate, and being available to be charged for payment by an order under clause g of subsection 2 of section 63,

(a) gifts *mortis causa*;

(b) money deposited, together with interest thereon, in an account in the name of the deceased in trust for another or others with any chartered bank, savings office, credit union or trust company, and remaining on deposit at the date of the death of the deceased;

(c) money deposited, together with interest thereon, in an account in the name of the deceased and another person or persons and payable on death pursuant to the terms of the deposit or by operation of law to the survivor or survivors of those

persons with any chartered bank, savings office, credit union or trust company, and remaining on deposit at the date of the death of the deceased;

- (d) any disposition of property made by a deceased whereby property is held at the date of his death by the deceased and another as joint tenants;
- (e) any disposition of property made by the deceased in trust or otherwise, to the extent that the deceased at the date of his death retained, either alone or in conjunction with another person or persons by the express provisions of the disposing instrument, a power to revoke such disposition, or a power to consume, invoke or dispose of the principal thereof, but the provisions of this clause do not affect the right of any income beneficiary to the income accrued and undistributed at the date of the death of the deceased;
- (f) any amount payable under a policy of insurance effected on the life of the deceased and owned by him; and
- (g) any amount payable under a designation of beneficiary under section 63 or 64 of *The Conveyancing and Law of Property Act* or under section 17 of *The Pension Benefits Act*, notwithstanding section 24 of that Act. R.S.O. 1970,
cc. 85, 342

(2) The capital value of the transactions referred to in ^{Idem} clauses *b*, *c* and *d* of subsection 1 shall be deemed to be included in the net estate of the deceased to the extent that the funds on deposit were the property of the deceased immediately before the deposit or the consideration for the property held as joint tenants was furnished by the deceased.

(3) Dependants claiming under this Part shall have the ^{Burden of proof} burden of establishing that the funds or property, or any portion thereof, belonged to the deceased.

(4) Where the other party to a transaction described in ^{Idem} clause *c* or *d* of subsection 1 is a dependant, he shall have the burden of establishing the amount of his contribution, if any.

(5) This section does not prohibit any corporation or ^{Exception} person from paying or transferring any funds or property, or any portion thereof, to any person otherwise entitled

thereto unless there has been personally served on the corporation or person a certified copy of a suspensory order made under section 59 enjoining such payment or transfer.

Suspensory
order

(6) Personal service upon the corporation or person holding any such fund or property of a certified copy of a suspensory order shall be a defence to any action or proceeding brought against the corporation or person with respect to the fund or property during the period the order is in force.

Rights of
creditor

(7) This section does not affect the rights of creditors of the deceased in any transaction with respect to which a creditor has rights. *New.*

Validity of
mortgage,
etc.

73. Where provision for the support of a dependant is ordered under this Part, a mortgage, charge or assignment of or with respect to such provision, made before the order of the court making such provision is entered, is invalid. *New.*

Persons in
institutions
under
R.S.O. 1970,
c. 269,
1974, c. 2

74.—(1) Where a person by whom, or on whose behalf, an application may be made under this Part is a patient in a psychiatric facility under *The Mental Health Act* or a resident in a facility under *The Developmental Services Act, 1974* at the time of the deceased's death or at any time before the application under this Part is heard and disposed of, notice of the application for letters probate or letters of administration shall be served upon the Public Trustee on behalf of that person, and the time within which the Public Trustee may make an application under this Part runs from the date of the service of the notice.

Notice to
Public
Trustee

(2) Where a person interested in the estate in respect of which an application is made under this Part is a patient in a psychiatric facility under *The Mental Health Act* or a resident in a facility under *The Developmental Services Act, 1974*, notice of the application shall in every case be served upon the Public Trustee, who has the right to appear and be heard upon the application. R.S.O. 1970, c. 126, s. 4 (5, 6), *amended.*

Removal
into
Supreme
Court

75. At any time before the hearing of an application, a judge of the Supreme Court upon motion on behalf of the personal representative of the deceased, the applicant, or any other person interested, and upon being satisfied that the application is of such a nature and of such importance as to render it proper that it should be disposed of in the Supreme Court and the property of

the deceased exceeds \$20,000, may by order direct that the application be heard by a judge of the Supreme Court and thereupon the matter shall be transferred into the Supreme Court and the application shall be heard by a judge of the Supreme Court who has the like powers and shall proceed in the like manner as the court on an application under this Part. R.S.O. 1970, c. 126, s. 4 (4), *amended*.

76. The court may direct that the costs of the application ^{Costs} be paid out of the estate or otherwise as it thinks proper, and may fix the amount of the costs payable by any party, exclusive of necessary disbursements, at a lump sum having regard to the value of the estate and the amount of any support applied for or directed by its order. R.S.O. 1970, c. 126, s. 11.

77. An appeal lies to the Supreme Court from any order ^{Appeal} of the court made under this Part. R.S.O. 1970, c. 126, s. 12 (1), *amended*.

78.—(1) An order or direction made under this Part may ^{Enforcement} be enforced against the estate of the deceased in the same way and by the same means as any other judgment or order of the court against the estate may be enforced.

(2) Where a court orders security for the payment ^{Realization of security} under an order under this Part or charges a property therewith, the court may, upon application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge. R.S.O. 1970, c. 126, s. 12, *amended*.

79. This Part binds the Crown. *New.*

^{Crown bound}

80.—(1) Subject to subsection 2, *The Dependants' Relief Act*, being chapter 126 of the Revised Statutes of Ontario, 1970, and *The Dependants' Relief Amendment Act, 1973*, being chapter 131, are repealed. ^{Repeals}

(2) The enactments repealed by subsection 1 continue in ^{Exception} force as if unrepealed in respect of applications where the deceased died before the 1st day of September, 1977.

81. This Part does not apply where the deceased died ^{Application of Part} before the 1st day of September, 1977, but an application may be made under section 65 regardless of the time of the deceased's death.

PART V

RIGHTS OF COMMON LAW SPOUSES
AND CHILDREN BORN OUTSIDE MARRIAGE

1971, c. 51,
s. 1 (1) (b, c),
re-enacted

82.—(1) Clauses *b* and *c* of subsection 1 of section 1 of *The Compensation for Victims of Crime Act, 1971*, being chapter 51, are repealed and the following substituted therefor:

R.S.O. 1970,
c. 64

(b) “child” means a child born within or outside marriage, subject to sections 83 and 85 of *The Child Welfare Act* (which relate to the effect of adoption), and includes a grandchild of the victim and a person whom the victim has demonstrated a settled intention to treat as a child of his family, and includes a child of the victim conceived before and born alive after the victim’s death, but does not include a child placed in the home of the victim as a foster child for consideration by a person having lawful custody;

(c) “dependant” means,

(i) the spouse of the victim,

(ii) a parent of the victim, including a grandparent and a person who has demonstrated a settled intention to treat the victim as a child of his family, but does not include a person in whose home the victim was placed as a foster child for consideration by a person having lawful custody,

(iii) a child of the victim,

(iv) a brother or sister of the victim, and

(v) any other relative of the victim,

who was in whole or in part dependent on the victim for support at the time of his death.

1971,
c. 51, s. 1 (2),
re-enacted

(2) Subsection 2 of the said section 1 is repealed and the following substituted therefor:

Unmarried
spouses

(2). The Board may direct that a person was the spouse of a deceased victim for the purposes of this Act where the Board finds that,

SECTION 82. The definition of child is standardized with the language used elsewhere in the Bill and the definition of dependants expressly includes certain degrees of relationship implicit in what is now referred to as "other relatives". The definition of recognizable common law marriages is standardized with the language used elsewhere in the Bill.

SECTION 83—Subsection 1. The amendment permits gifts made to or by reference to the spouse of a person to take effect where the spouse is a common law spouse, as defined, in the same way as a gift made to or by reference to a legally married spouse.

Subsection 2. The amendment permits gifts made to issue of an unborn person to take effect where the issue is born outside marriage.

(a) they were a man and a woman who, not being married to each other, had been cohabiting immediately before the death of the victim,

(i) continuously for a period of not less than five years, or

(ii) in a relationship of some permanence where there is a child born of whom they are the natural parents; or

(b) their marriage was terminated by a decree absolute of divorce or was declared a nullity and the spouse was a person to whom the victim was providing support or was under a legal obligation to provide support immediately before his death.

(3) Subject to section 6 of *The Compensation for Victims of Crime Act, 1971*, this section applies to applications whether the victim died before, on or after the 1st day of September, 1977. 1971, c. 51

83.—(1) Section 9 of *The Perpetuities Act*, being chapter 343 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following subsection: R.S.O. 1970,
c. 343, s. 9,
amended

(2) For the purposes of subsection 1, “spouse” includes either of a man and a woman who, not being married to each other, had been cohabiting immediately before the death of one of them, “spouse”
defined

(a) continuously for a period of not less than five years; or

(b) in a relationship of some permanence where there is a child born of whom they are the natural parents.

(2) Section 17 of the said Act is amended by striking out “the unborn child or other” in the second and third lines and inserting in lieu thereof “any unborn”. R.S.O. 1970,
c. 343, s. 17,
amended

(3) Section 17 of the said Act is further amended by adding thereto the following subsection. R.S.O. 1970,
c. 343, s. 17,
amended

(2) For the purposes of subsection 1, “issue” means issue of a person, whether born within or outside marriage, subject to sections 83 and 85 of *The Child Welfare Act*. “issue”
defined
R.S.O. 1970,
c. 64

GENERAL

Commence-
ment

84. This Act comes into force on the 1st day of September, 1977.

Short title

85. This Act may be cited as *The Succession Law Reform Act, 1977*.

An Act to reform the Law respecting
Succession to the Estates of Deceased
Persons

1st Reading

March 31st, 1977

2nd Reading

3rd Reading

THE HON. R. MCMURTRY
Attorney General

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**Government
Publications**

**An Act to reform the
Law respecting the Status of Children**

THE HON. R. MCMURTRY
Attorney General



TORONTO

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EXPLANATORY NOTES

PART I. The Bill would remove any distinction in law between legitimate and illegitimate children. A child would be a child of his natural parents regardless of their marital status.

PART II. This Part deals with the establishment of parentage. Maternity is generally ascertainable through the event of birth, registration and nurture. The existence of certain circumstances set out in section 8 would raise a presumption of paternity similar to the present presumption of legitimacy if born in wedlock. Also, similarly, the presumption can be rebutted where an issue arises turning on paternity.

PART III. The amendments eliminate specific references to legitimacy, illegitimacy or legitimation in other statutes and makes other complementary amendments.

BILL 9

1977

An Act to reform the Law respecting the Status of Children

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I

EQUAL STATUS OF CHILDREN

1.—(1) Subject to subsection 2, for all purposes of the law of Ontario a person is the child of his or her natural parents and his or her status as their child is independent of whether the child is born within or outside marriage. Rule of parentage

(2) Where an adoption order has been made, section 83 or 85 of *The Child Welfare Act* applies and the child is the child of the adopting parents as if they were the natural parents. Exception for adopted children
R.S.O. 1970,
c. 64

(3) Where persons are in the relationship of parent and child as determined under subsection 1 or 2, the relationship shall be recognized in determining the kindred relationships flowing therefrom for any purpose. Kindred relationships

(4) Any distinction at common law between the status of children born in wedlock and born out of wedlock is abolished and the relationship of parent and child and kindred relationships flowing therefrom shall be determined for the purposes of the common law in accordance with this section. Common law distinction of legitimacy abolished

2.—(1) For the purposes of construing any instrument, Act or regulation, unless the contrary intention appears, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person shall be construed to refer to or include a person who comes within the description by reason of Rule of construction

the relationship of parent and child as determined under section 1.

Application (2) Subsection 1 applies to,

- (a) any Act of the Legislature or any regulation, order or by-law made under an Act of the Legislature enacted or made before, on or after the day this Act comes into force; and
- (b) any instrument made on or after the day this Act comes into force.

PART II

ESTABLISHMENT OF PARENTAGE

Court under
ss. 4-7

3. The court having jurisdiction for the purposes of sections 4 to 7 shall be the Unified Family Court in the Judicial District of Hamilton-Wentworth and the Supreme Court in the other parts of Ontario.

Application
for
declaration

4.—(1) Any person having an interest may apply to a court for a declaration that a male person is recognized in law to be the father of a child or that a female person is the mother of a child.

Declaration
of paternity
recognized
at law

(2) Where the court finds that a presumption of paternity exists under section 8 and unless it is established, on the balance of probabilities, that the presumed father is not the father of the child, the court shall make a declaratory order confirming that the paternity is recognized in law.

Declaration
of
maternity

(3) Where the court finds on the balance of probabilities that the relationship of mother and child has been established, the court may make a declaratory order to that effect.

Idem

(4) Subject to sections 6 and 7, an order made under this section shall be recognized for all purposes.

Application
for
declaration of
paternity
where no
presumption

5.—(1) Where there is no person recognized in law under section 8 to be the father of a child, any person may apply to the court for a declaration that a male person is his or her father, or any male person may apply to the court for a declaration that a person is his child.

Limitation

(2) An application shall not be made under subsection 1 unless both the persons whose relationship is sought to be established are living.

SECTION 4. Judicial procedure is provided for confirming paternity that is under a presumption or maternity. This may be taken by a third person having an interest, e.g., the personal representative in an estate, and whether or not the parent and child are living.

SECTION 5. Judicial procedure is provided for establishing paternity where there is no presumption, but only during the life of both father and child.

SECTIONS 6 AND 7. Review on new evidence and appeals are provided for.

SECTION 8. The presumptions of paternity are set out.

(3) Where the court finds on the balance of probabilities that the relationship of father and child has been established, the court may make a declaratory order to that effect and, subject to sections 6 and 7, the order shall be recognized for all purposes. Declaratory order

6. Where a declaration has been made under section 4 or 5 and evidence becomes available that was not available at the previous hearing, the court may, upon application, discharge or vary the order and make such other orders or directions as are ancillary thereto. Reopening on new evidence

7. An appeal lies from an order under section 4 or 5 or a decision under section 6 in accordance with the rules of the court. Appeal

8.—(1) Unless the contrary is proven on a balance of probabilities, there is a presumption that a male person is, and he shall be recognized in law to be, the father of a child in any one of the following circumstances: Recognition in law of parentage

1. The person is married to the mother of the child at the time of the birth of the child.
2. The person was married to the mother of the child by a marriage that was terminated by death or judgment of nullity within 300 days before the birth of the child or by divorce where the decree *nisi* was issued within 300 days before the birth of the child.
3. The person marries the mother of the child after the birth of the child and acknowledges that he is the natural father.
4. The person was cohabiting with the mother of the child in a relationship of some permanence at the time of the birth of the child or the child is born within 300 days after they ceased to cohabit.
5. The person and the mother of the child have filed a statutory declaration under subsection 8 of section 6 of *The Vital Statistics Act* or a request under subsection 5 of section 6 of that Act, or either under a similar provision under the corresponding Act in another jurisdiction in Canada. R.S.O. 1970, c. 483
6. The person has been found or recognized in his lifetime by a court of competent jurisdiction in Canada to be the father of the child.

Where
marriage
void

(2) For the purpose of subsection 1, where a man and woman go through a form of marriage with each other, in good faith, that is void and cohabit, they shall be deemed to be married during the time they cohabit and the marriage shall be deemed to be terminated when they cease to cohabit.

Conflicting
presump-
tions

(3) Where circumstances exist that give rise to a presumption or presumptions of paternity by more than one father under subsection 1, no presumption shall be made as to paternity nor recognition given in law thereto.

Admissi-
bility in
evidence of
acknowledg-
ment against
interest

9. A written acknowledgment of parentage that is admitted in evidence in any civil proceeding against the interest of the person making the acknowledgment is *prima facie* proof of the fact.

Approved
blood tests

10.—(1) Upon the application of a party in a civil proceeding in which the court is called upon to determine the parentage of a child, the court may give the party leave to obtain blood tests of such persons as are named in the order granting leave and to submit the results in evidence.

Conditions
attached

(2) Leave under subsection 1 may be given subject to such terms and conditions as the court thinks proper.

Inference
from refusal

(3) Where leave is given under subsection 1 and a person named therein refuses to submit to the blood test, the court may draw such inferences as it thinks appropriate.

Consent
where
incapacity

(4) Where a person named in an order granting leave under subsection 1 is not capable of consenting to having a blood test taken, the consent shall be deemed to be sufficient,

(a) where the person is a minor of the age of sixteen years or more, if the minor consents;

(b) where the person is a minor under the age of sixteen years, if the person having the charge of the minor consents; and

(c) where the person is without capacity for any reason other than minority, if the person having his charge consents and a legally qualified medical practitioner certifies that the giving of a blood sample would not be prejudicial to his proper care and treatment.

Regulations
for blood
tests

11. The Lieutenant Governor in Council may make regulations governing blood tests for which leave is given

SECTION 9. Acknowledgments against interest are given recognition as evidence of parentage.

SECTIONS 10 AND 11. The use of blood tests as evidence of paternity is encouraged by regulating standards for testing, by facilitating medical consents in cases of persons without capacity and by permitting the court to attach evidentiary significance to a refusal.

SECTIONS 12, 13, 14 and 15. Provision is made for acknowledgment of paternity by statutory declaration to be filed and available in the office of the Registrar General, with no special evidentiary value except when used in a court case against interest. Other documents clarifying paternity would also be collected and available.

by a court under section 10 including, without limiting the generality of the foregoing,

- (a) the method of taking blood samples and the handling, transportation and storage thereof;
- (b) the conditions under which a blood sample may be tested;
- (c) designating persons or facilities or classes thereof who are authorized to conduct blood tests for the purposes of section 10;
- (d) prescribing procedures respecting the admission of reports of blood tests in evidence;
- (e) prescribing forms for the purpose of section 10 and this section and providing for their use.

12.—(1) Any person may file in the office of the Registrar General a statutory declaration, in the form prescribed by the regulations, affirming that he is the father of a child. Statutory declaration of paternity

(2) The Registrar General shall not amend a registration of birth on the strength of a statutory declaration filed under subsection 1. Not affecting registration of birth

(3) Upon application and upon payment of the fee prescribed under *The Vital Statistics Act*, any person having an interest may inspect any relevant statutory declaration filed under subsection 1 and obtain a certified copy thereof from the Registrar General. Inspection and copies R.S.O. 1970, c. 483

13. Upon application and upon payment of the fee prescribed under *The Vital Statistics Act*, any person who has an interest, furnishes substantially accurate particulars and satisfies the Registrar General as to his reason for requiring it may inspect any statutory declaration filed under subsection 8 of section 5 of *The Vital Statistics Act* or any request filed under subsection 5 of section 6 of that Act and obtain a certified copy thereof from the Registrar General. Inspection of filings under R.S.O. 1970, c. 483, s. 6 (5, 8)

14.—(1) The registrar or clerk of every court in Ontario shall furnish the Registrar General with a statement in the form prescribed by the regulations respecting each order or judgment of the court that makes a finding of parentage or that is based upon a recognition of parentage. Filing of court decisions respecting parentage

(2) Upon application and upon payment of the fee prescribed under *The Vital Statistics Act*, any person may Inspection by public

inspect an order or judgment filed under subsection 1 and obtain a certified copy thereof from the Registrar General.

Certified
copies as
evidence

15. A certificate certifying a copy of a document to be a true copy, obtained under section 12, 13 or 14, purporting to be signed by the Registrar General or Deputy Registrar General or on which the signature of either is lithographed, printed or stamped is, without proof of the office or signature of the Registrar General or Deputy Registrar General, receivable in evidence as *prima facie* proof of the filing and contents of the document for all purposes in any action or proceeding.

Regulations
for forms

16. The Lieutenant Governor in Council may make regulations prescribing forms for the purposes of this Part.

PART III

COMPLEMENTARY AMENDMENTS

R.S.O. 1970,
c. 222, s. 16 (1),
amended

17.—(1) Subsection 1 of section 16 of *The Infants Act*, being chapter 222 of the Revised Statutes of Ontario, 1970, is amended by inserting after “father” in the third line “if known”.

s. 16 (2),
amended

(2) Subsection 2 of the said section 16 is amended by inserting after “no” in the first line “known”.

R.S.O. 1970,
c. 242,
repealed

18. *The Legitimacy Act*, being chapter 242 of the Revised Statutes of Ontario, 1970, is repealed.

R.S.O. 1970,
c. 343, s. 7 (4),
amended

19. Subsection 4 of section 7 of *The Perpetuities Act*, being chapter 343 of the Revised Statutes of Ontario, 1970, is amended by striking out “legitimation” in the second line.

R.S.O. 1970,
c. 396, s. 30,
amended

20. Section 30 of *The Quieting Titles Act*, being chapter 396 of the Revised Statutes of Ontario, 1970, is amended by striking out “legitimate” in the second line.

R.S.O. 1970,
c. 449,
s. 1 (d) (i),
amended

21.—(1) Subclause i of clause *d* of section 1 of *The Succession Duty Act*, being chapter 449 of the Revised Statutes of Ontario, 1970, is amended by striking out “legitimate”.

s. 1 (d) (iv),
amended

(2) Subclause iv of clause *d* of the said section 1 is amended by striking out “legitimate” in the first line.

s. 7 (11) (c) (i),
amended

(3) Subclause i of clause *c* of subsection 11 of section 7 of the said Act, as re-enacted by the Statutes of Ontario,

SECTION 16. Prescribing forms by regulation is provided for.

SECTION 17. The provisions amended are concerned with the consent of a father on appointment of a guardian. The amendments recognize that the father, as determined under this Act, may not be known.

SECTIONS 18 TO 23. The amendments eliminate references to legitimate and illegitimate children.

1973, chapter 109, section 2, is amended by striking out "legitimate".

22.—(1) Subsection 2 of section 6 of *The Vital Statistics Act*, being chapter 483 of the Revised Statutes of Ontario, 1970, is amended by striking out "an illegitimate child" in the first and second lines and inserting in lieu thereof "a child born outside marriage". R.S.O. 1970,
c. 483, s. 6 (2),
amended

(2) Section 12 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 98, section 4, is further amended by striking out "a child has been legitimated by the subsequent intermarriage of his parents" in the first and second lines and inserting in lieu thereof "after the birth of a child his parents intermarry", and by striking out "as to the legitimation" in the thirteenth line. s. 12,
amended

(3) Subsection 2 of section 41 of the said Act is repealed. s. 41 (2),
repealed

23. Clause *r* of subsection 1 of section 1 of *The Workmen's Compensation Act*, being chapter 505 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1973, chapter 173, section 1, is further amended by striking out "and, where the employee is the parent or grandparent of an illegitimate child, includes such child and, where the employee is an illegitimate child, includes his parents and grandparents" in the eighth, ninth, tenth and eleventh lines and in the amendment of 1973. R.S.O. 1970,
c. 505,
s. 1 (1) (r),
amended

24. This Act comes into force on the 1st day of September, 1977. Commence-
ment

25. This Act may be cited as *The Children's Law Reform Act*, 1977. Short title

An Act to reform the
Law respecting the Status of Children

1st Reading

March 31st, 1977

2nd Reading

3rd Reading

THE HON. R. McMurtry
Attorney General

(Government Bill)

A24N
XB
-B56

BILL 10

Private Member's Bill

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publications

**An Act to amend
The Election Finances Reform Act, 1975**



MR. JOHNSON
(Wellington-Dufferin-Peel)

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

This Bill permits newspapers which are published weekly or less frequently to accept election advertisements when the regular publication date comes on the day before polling day. The amendment is substantially the same as a recommendation of the Commission on Election Contributions and Expenses contained in its Second Annual Report.

BILL 10

1977

**An Act to amend
The Election Finances Reform Act, 1975**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 38 of *The Election Finances Reform Act, 1975*, being ^{s. 38,} amended chapter 12, is amended by adding thereto the following subsection:

(2a) Nothing contained in subsection 1 shall prohibit the procuring for publication, causing to be published or ^{Extension of period of campaign advertising} sending to the publication of an advertisement referred to therein on the day before polling day in a newspaper which is published in Ontario not more frequently than once a week and whose day of regular publication falls on the day before polling day.

2. This Act comes into force on the day it receives Royal Assent. ^{Commence-ment}
3. This Act may be cited as *The Election Finances Reform* ^{Short title} *Amendment Act, 1977*.

An Act to amend
The Election Finances
Reform Act, 1975

1st Reading

March 31st, 1977

2nd Reading

3rd Reading

MR. JOHNSON
(Wellington-Dufferin-Peel)

(Private Member's Bill)

A-40
X12
-B56

BILL 10

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publications

**An Act to amend
The Election Finances Reform Act, 1975**

MR. JOHNSON
(Wellington-Dufferin-Peel)



BILL 10

1977

**An Act to amend
The Election Finances Reform Act, 1975**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 38 of *The Election Finances Reform Act, 1975*, being ^{s. 38,} chapter 12, is amended by adding thereto the following subsection:

(2a) Nothing contained in subsection 1 shall prohibit the procuring for publication, causing to be published or ^{Extension of period of campaign advertising} sending to the publication of an advertisement referred to therein on the day before polling day in a newspaper which is published in Ontario not more frequently than once a week and whose day of regular publication falls on the day before polling day.

2. This Act comes into force on the day it receives Royal Assent. <sup>Commence-
ment</sup>
3. This Act may be cited as *The Election Finances Reform* ^{Short title} *Amendment Act, 1977*.

An Act to amend
The Election Finances
Reform Act, 1975

1st Reading

March 31st, 1977

2nd Reading

April 21st, 1977

3rd Reading

April 21st, 1977

MR. JOHNSON
(Wellington-Dufferin-Peel)

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**Government
Publications**

An Act to amend The Personal Property Security Act

THE HON. S. B. HANDLEMAN
Minister of Consumer and Commercial Relations



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTES

SECTION 1. Section 44 of the Act presently reads as follows:

44.—(1) Upon the request of any person and upon payment of the prescribed fee the registrar shall,

(a) issue a certificate stating whether there is registered at the time mentioned in the certificate a financing statement or financing change statement the registration of which is still effective in which the person named in the certificate is shown as a debtor and, if there is, the registration number of it, and any other information recorded in the central office of the registration system; or

(b) furnish a certified copy of a registered financing statement or a registered financing change statement.

(2) A certificate issued under clause a of subsection 1 is prima facie evidence of the contents thereof.

(3) A certified copy furnished under clause c of subsection 1 is prima facie evidence of the contents of the document so certified.

Subsection 1 of section 44 of the Act, as re-enacted, breaks down the search into three possible indices, namely, the individual debtor index, the business debtor index and the motor vehicle serial number index.

Subsection 3 of section 44 of the Act is amended to correct an internal reference.

BILL 11

1977

An Act to amend The Personal Property Security Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 1 of section 44 of *The Personal Property Security Act*, being chapter 344 of the Revised Statutes of Ontario, 1970, as re-enacted by the Statutes of Ontario, 1973, chapter 102, section 8, is repealed and the following substituted therefor: s. 44 (1),
re-enacted

(1) Upon the request of any person for a search of the individual debtor index, business debtor index or motor vehicle serial number index and upon payment of the prescribed fee, the registrar shall Certificate
of
registrar

- (a) issue a certificate stating whether there is registered at the time mentioned in the certificate a financing statement or financing change statement the registration of which is still effective in which the person named or the motor vehicle serial number shown in the certificate is shown in the designated place on the financing statement or financing change statement as a debtor or as a serial number, as the case may be, and, if there is, the registration number of it and any other related information recorded in the central file of the registration system; or
- (b) furnish a certified copy of a registered financing statement or a registered financing change statement.

- (2) Subsection 3 of the said section 44 is amended by striking out "c" in the first line and inserting in lieu thereof "b". s. 44 (3),
amended

Commence-
ment

2. This Act comes into force on the 1st day of April, 1977.

Short title

3. This Act may be cited as *The Personal Property Security Amendment Act, 1977*.

An Act to amend
The Personal Property Security Act

1st Reading

March 31st, 1977

2nd Reading

3rd Reading

THE HON. S. B. HANDLEMAN
Minister of Consumer and
Commercial Relations

(Government Bill)

200N
4 B
B 56

BILL 12

Private Member's Bill

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

*Government
Publication*

An Act to provide for Class Actions

MR. LAWLOR

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The purpose of this Bill is to provide a statutory procedure whereby one or more persons may sue a defendant in the form of a class action.

The Bill is designed to achieve this purpose by permitting a person who wishes to sue on behalf of a class to apply for a court order authorizing the class action. Once the order is obtained, the action proceeds as a class action, and the final judgment binds all members of the class, except those who have been excluded, as well as the parties to the action.

BILL 12

1977

An Act to provide for Class Actions

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act, "Court" means the Supreme Court of Ontario. <sup>Interpre-
tation</sup>

2.—(1) Where a person has a cause of action involving <sup>Class
action</sup> questions of law or fact that are common to a class of persons, he may commence the action as representative party on behalf of the class.

(2) An action under subsection 1 shall not be main- <sup>Order
required</sup> tained as a class action unless the person or persons suing as representative party has obtained an order of the Court permitting the action to proceed as a class action.

3.—(1) A representative party may apply to the Court <sup>Where order
to be
granted</sup> for an order referred to in section 2, and the Court may make the order where it is satisfied that,

- (a) the claims of the representative party are typical of the claims of the class;
- (b) the questions of law or fact common to the members of the class predominate over any questions affecting only individual members;
- (c) a class action is superior to other available methods for the fair and efficient adjudication of the controversy; and
- (d) the representative party is acting in good faith and it is *prima facie* in the interests of the class that the action be maintained as a class action.

(2) The Court shall not refuse to make an order under this section on the ground only that, <sup>Where order
not to be
denied</sup>

- (a) the relief claimed in the action includes a claim for damages;
- (b) the relief claimed in the action arises out of or relates to separate contracts or transactions made with or entered into between members of the class and the defendant; or
- (c) any damages claimed for members of the class will require individual action.

Content
of order

(3) An order under subsection 1 shall,

- (a) define the class on whose behalf the claim is brought;
- (b) describe briefly the nature of the claim made and of the relief sought;
- (c) state the questions of law or fact that are common to the class; and
- (d) specify a date before which members of the class may exclude themselves from the class.

Variation
of order

(4) An order made under this section may be varied from time to time or rescinded by the Court if it thinks it fit and just to do so before judgment in the action.

Notice of
class action

4.—(1) Where an order is made under section 3, the Court may direct that notice in manner and form satisfactory to the Court be given to the members of the class or any of them advising them of the proceedings and of the date before which members of the class may exclude themselves from the class.

Statement
of desire
for exclu-
sion from
the class

(2) Where a person has notice that he is a member of a class on behalf of which a representative party is suing, he shall be excluded from the class by filing with the Court a statement of his desire to be excluded, in writing signed by him prior to the date specified in the order under section 3, and may be excluded, in the discretion of the Court, where the statement is filed subsequent to the date specified in the order and prior to judgment.

Judgment

5.—(1) The judgment in a class action constitutes a final judgment between each member of the class who was not excluded under section 4 and each person against whom the class action was taken in respect of those matters set out in the order under section 3.

(2) Notwithstanding anything in subsection 1, the Court ^{Idem} may provide in the judgment for subsequent determination of the amount of compensation for loss or damage suffered by members of the class or any other issues.

6. An action maintained as a class action shall not be discontinued, settled or dismissed for want of prosecution <sup>Discontinu-
ance, settle-
ment, etc.</sup> without the approval of the Court, and, if the Court determines that the interests of the class may be substantially affected by such discontinuance, settlement or dismissal, the Court may direct that notice in manner, form and content satisfactory to the Court shall be given.

7. This Act comes into force on the day it receives Royal <sup>Commence-
ment</sup> Assent.

8. This Act may be cited as *The Class Actions Act, 1977*. ^{Short title}

An Act to provide
for Class Actions

1st Reading

March 31st, 1977

2nd Reading

3rd Reading

MR. LAWLOR

(Private Member's Bill)

244
B
B 56

BILL 13

Private Member's Bill

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publication

An Act respecting Occupiers' Liability

MR. LAWLOR

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The Bill replaces the common law as to an occupier's duty of care, replacing the common law distinctions between duties to invitees, licensees, trespassers and child trespassers with one common duty of care applied to the circumstances of each case.

The Bill is in the form recommended by The Uniform Law Conference of Canada.

BILL 13

1977

An Act respecting Occupiers' Liability

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

(a) "occupier" means,

- (i) a person who is in physical possession of premises, or
- (ii) a person who has responsibility for, and control over, the condition of premises, the activities conducted on those premises and the persons allowed to enter the premises,

and, for the purposes of this Act, there may be more than one occupier of the same premises;

(b) "premises" includes,

- (i) land and structures or either of them, excepting portable structures and equipment other than those described in subclause iii,
- (ii) ships and vessels,
- (iii) trailers and portable structures designed or used for a residence, business, or shelter,
- (iv) railway locomotives, railway cars, vehicles, and aircraft while not in operation.

2. Subject to subsection 4 of section 3, and sections 4 and 9, the provisions of this Act determine the care that

Application
of Act

an occupier is required to show toward persons entering on the premises in respect of dangers to them, or to their property on the premises, or to the property on the premises of persons who have not themselves entered on the premises, that are due to the state of the premises, or to anything done or omitted to be done on the premises, and for which he is in law responsible.

Occupiers'
duty of
care

3.—(1) An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that any person, and his property on the premises, and any property on the premises of a person, whether or not that person himself enters on the premises, will be reasonably safe in using the premises.

Idem

(2) The duty of care referred to in subsection 1 applies in relation to,

(a) the condition of the premises; or

(b) activities on the premises; or

(c) the conduct of third parties on the premises.

Where no
duty of
care

(3) Notwithstanding subsection 1, an occupier has no duty of care to a person in respect of risks willingly accepted by that person as his own risks.

Higher
standard
of care
preserved

(4) Nothing in this section relieves an occupier of premises of a duty to exercise, in a particular case, a higher standard of care which, in that case, is incumbent upon him by virtue of an enactment or rule of law imposing special standards of care on particular classes of persons.

Contracting
out

4.—(1) Subject to subsections 2, 3 and 4, where an occupier is permitted by law to extend, restrict, modify, or exclude his duty of care to any person by express agreement, or by express stipulation or notice, the occupier shall take reasonable steps to bring such extension, restriction, modification, or exclusion to the attention of that person.

Idem

(2) Subsection 1 does not apply to a person,

(a) who is not privy to the express agreement;

(b) who is empowered or permitted to enter or use the premises without the consent or permission of the occupier.

(3) Where an occupier is bound by contract to permit persons who are not privy to the contract to enter or use the premises, the duty of care of the occupier to such persons shall, notwithstanding anything to the contrary in that contract, not be restricted, modified or excluded thereby. Duty owed to persons not privy to contract

(4) This section applies to express contracts entered into before or after the commencement of this section. Applicable to express contracts

5.—(1) Notwithstanding subsection 1 of section 3, where damage is caused by the negligence of an independent contractor engaged by the occupier, the occupier is not on that account liable under this Act if, in all the circumstances, Independent contractors

- (a) the occupier exercised reasonable care in the selection and supervision of the independent contractor; and
- (b) it was reasonable that the work that the independent contractor was engaged to do should have been undertaken.

(2) Subsection 1 shall not be construed as restricting or excluding the liability of an occupier for the negligence of his independent contractor imposed by any other Act. Idem

(3) Where there is damage under the circumstances set out in subsection 1, and there is more than one occupier of the premises, each occupier is entitled to rely on the provisions of subsection 1. Idem

6.—(1) Where premises are occupied or used by virtue of a tenancy under which a landlord is responsible for the maintenance or repair of the premises, it is the duty of the landlord to show toward any person who, or whose property, may be on the premises the same care in respect of risks arising from any failure on his part in carrying out his responsibility, as is required by virtue of this Act to be shown by an occupier of premises toward persons entering on or using them. Landlord and tenant relationship

(2) Where premises are occupied by virtue of a sub-tenancy, subsection 1 applies to any landlord who is responsible for the maintenance or repair of the premises comprised in the sub-tenancy. Sub-tenancy

(3) For the purposes of this section, a landlord shall not be deemed to be in default in his duty under subsection 1 unless his default is such as to be actionable at the suit of the occupier. Idem

Other duties preserved	(4) Nothing in this section shall be construed as relieving a landlord of any duty he may have apart from this section.
Idem	(5) For the purposes of this section, obligations imposed by any enactment in respect of a tenancy shall be deemed to be imposed by the tenancy, and "tenancy" includes a statutory tenancy, an implied tenancy, and any contract conferring the right of occupation, and "landlord" shall be construed accordingly.
Application of section	(6) This section applies to tenancies created before or after the commencement of this section.
Application of R.S.O. 1970, c. 296	7. <i>The Negligence Act</i> applies to this Act.
Crown bound R.S.O. 1970, c. 365	8. —(1) Except as otherwise provided in subsection 2, the Crown is bound by this Act, and <i>The Proceedings Against the Crown Act</i> applies.
Idem	(2) Notwithstanding subsection 1, this Act does not apply to the Crown or to a municipality where the Crown or the municipality is the occupier of a public highway or public road.
Not to affect certain relationships	9. This Act does not apply to or affect, <ul style="list-style-type: none"> (a) the liability of an employer in respect of his duties to his employee; or (b) the liability of any person by virtue of a contract for the hire of, or for the carriage for reward of persons or property in, any vehicle, vessel, aircraft, or other means of transport; or
R.S.O. 1970, c. 223	<ul style="list-style-type: none"> (c) the liability of any person under <i>The Innkeepers Act</i>; or (d) the liability of any person by virtue of a contract of bailment.
No retro-activity	10. Subject to subsection 3 of section 4 and subsection 6 of section 6, this Act applies only in respect of a cause of action arising after this Act comes into force.
Commence-ment	11. This Act comes into force on the day it receives Royal Assent.
Short title	12. This Act may be cited as <i>The Occupiers' Liability Act, 1977</i> .

Bill 13

An Act respecting Occupiers' Liability

1st Reading

March 31st, 1977

2nd Reading

3rd Reading

MR. LAWLOR

(Private Member's Bill)

2A20
XB
- B56

Ontario. Legislative Assembly

BILL 14

Government Bill

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**Government
Publications**

An Act to amend The Labour Relations Act

THE HON. B. STEPHENSON
Minister of Labour



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTES

SECTION 1. Clauses *e*, *h* and *n* of subsection 1 of section 1 of the Act now read as follows:

(*e*) “collective agreement” means an agreement in writing between an employer or an employers’ organization, on the one hand, and a trade union that, or a council of trade unions that, represents employees of the employer or employees of members of the employers’ organization, on the other hand, containing provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, the employers’ organization, the trade union or the employees;

.

(*h*) “employers’ organization” means an organization of employers formed for purposes that include the regulation of relations between employers and employees and includes an accredited employers’ organization;

.

(*n*) “trade union” means an organization of employees formed for purposes that include the regulation of relations between employees and employers and includes a provincial, national or international trade union and a certified council of trade unions.

The re-enactment of clause *e* adds the words “and includes a provincial agreement”.

The re-enactment of clause *h* adds the words “and a designated or accredited employer bargaining agency”.

The re-enactment of clause *n* adds the words “and a designated or certified employee bargaining agency”.

In each instance the added words are complementary to the new sections 125 to 140 of the Act.

SECTION 2. The amendment is complementary to the new section 134 (3).

SECTION 3. The new sections 125 to 140 deal with province-wide bargaining in the industrial, commercial and institutional sector of the construction industry.

Section 125. The definitions are complementary to the new sections of the Act.

Section 126. Self-explanatory.

Section 127.—Subsection 1. The subsection provides that initially new bargaining agencies are to be designated by the Minister to represent individual trades or crafts and employers of such trades or crafts in province-wide, multi-employer bargaining in the industrial, commercial and institutional sector of the construction industry.

Subsection 2. The subsection permits the Minister to convene a conference of trade unions and employers to advise in the selection of the appropriate bargaining agency.

Subsection 3. The Minister may refer to the Ontario Labour Relations Board any question concerning a designation.

Subsection 4. The Minister is empowered to amend or revoke a designation and to make another designation.

Subsection 5. Self-explanatory.

Section 128. The section provides that a designated employee bargaining agency may be replaced by the Ontario Labour Relations Board if the Board finds the applicant for replacement to be more representative of employees in the trade or craft.

Section 129. The section provides that a designated employer bargaining agency may be replaced by the Ontario Labour Relations Board if the Board finds the applicant for replacement to be more representative of the employers in the trade or craft.

Section 130. The section provides that an employee bargaining agency, upon designation or replacement by the Ontario Labour Relations Board, has vested in it all the bargaining rights of the trade unions which represent the members of a particular trade or craft for the purpose of bargaining for a provincial agreement.

Section 131. The section provides that an employer bargaining agency, upon designation or replacement, has vested in it all the bargaining rights of employers for the purpose of bargaining for a provincial agreement.

Section 132. The section provides that existing collective agreements shall end according to their term of operation and are then replaced by the provincial agreements which will become binding upon employers, trade unions and employees in the trades or crafts covered by the provincial agreements.

Section 133. The section provides that a provincial agreement shall be the only agreement between employers and a designated trade or craft and any agreement or arrangement other than a provincial agreement shall be null and void.

The section further provides that all provincial agreements shall expire at the same time, April 30th, and shall be for a period of two years.

Section 134. The section sets out who is bound by a provincial agreement.

Section 135. The Ontario Labour Relations Board is empowered to determine whether work performed by employees is within the industrial, commercial and institutional sector of the construction industry.

Section 136. The section provides that an employee and an employer bargaining agency shall act in good faith with their members and the employers or unions they represent.

Section 137. The section provides that a co-ordinating agency of employer bargaining agencies may be designated and the constitution, etc., thereof, regulated by regulations made by the Lieutenant Governor in Council.

Section 138. Self-explanatory.

Section 139. Self-explanatory.

Section 140. Self-explanatory.

An Act to amend The Labour Relations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clauses *e*, *h* and *n* of subsection 1 of section 1 of *The Labour Relations Act*, being chapter 232 of the Revised Statutes of Ontario, 1970, are repealed and the following substituted therefor: s. 1(1)(*e, h, n*)
re-enacted

(*e*) “collective agreement” means an agreement in writing between an employer or an employers’ organization, on the one hand, and a trade union that, or a council of trade unions that, represents employees of the employer or employees of members of the employers’ organization, on the other hand, containing provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, the employers’ organization, the trade union or the employees, and includes a provincial agreement;

.

(*h*) “employers’ organization” means an organization of employers formed for purposes that include the regulation of relations between employers and employees and includes an accredited employers’ organization and a designated or accredited employer bargaining agency;

.

(*n*) “trade union” means an organization of employees formed for purposes that include the regulation of relations between employees and employers and includes a provincial, national, or international trade union, a certified council of trade unions and a designated or certified employee bargaining agency.

s. 112a(1),
amended

2. Subsection 1 of section 112a of the said Act, as enacted by the Statutes of Ontario, 1975, chapter 76, section 30, is amended by striking out "either" in the third line and inserting in lieu thereof "a".

ss. 125-140,
enacted

3. The said Act is amended by adding thereto the following sections:

PROVINCE-WIDE BARGAINING

Interpre-
tation

125. In this section and in sections 126 to 140,

- (a) "affiliated bargaining agent" means a bargaining agent that, according to established trade union practice in the construction industry, represents employees who commonly bargain separately and apart from other employees and is subordinate or directly related to, or is, a provincial, national or international trade union, and includes an employee bargaining agency;
- (b) "bargaining", except when used in reference to an affiliated bargaining agent, means province-wide, multi-employer, bargaining in the industrial, commercial and institutional sector of the construction industry referred to in clause *e* of section 106;
- (c) "co-ordinating agency" means an organization of employer bargaining agencies formed for purposes that include the co-ordination of bargaining and designated in the regulations;
- (d) "employee bargaining agency" means an organization of affiliated bargaining agents that are subordinate or directly related to the same provincial, national or international trade union, and that may include the parent or related provincial, national or international trade union, formed for purposes that include the representation of affiliated bargaining agents in bargaining and which may be a single provincial, national or international trade union;
- (e) "employer bargaining agency" means an employers' organization or group of employers' organizations formed for purposes that include the representation of employers in bargaining;
- (f) "provincial agreement" means an agreement in writing covering the whole of the Province of Ontario between a designated or accredited em-

ployer bargaining agency that represents employers, on the one hand, and a designated or certified employee bargaining agency that represents affiliated bargaining agents, on the other hand, containing provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer bargaining agency, the employers represented by the employer bargaining agency and for whose employees the affiliated bargaining agents hold bargaining rights, the affiliated bargaining agents represented by the employee bargaining agency, or the employees represented by the affiliated bargaining agents and employed in the industrial, commercial and institutional sector of the construction industry referred to in clause *e* of section 106.

126. Where there is conflict between any provision in sections 127 to 140 and any provision in sections 5 to 49 and 54 to 124, the provisions in sections 127 to 140 prevail. Conflict

127.—(1) The Minister may, upon such terms and conditions as the Minister considers appropriate, Designation
by Minister

- (a) designate employee bargaining agencies to represent in bargaining provincial units of affiliated bargaining agents, and describe those provincial units;
- (b) notwithstanding an accreditation of an employers' organization as the bargaining agent of employers, designate employer bargaining agencies to represent in bargaining provincial units of employers for whose employees affiliated bargaining agents hold bargaining rights, and describe those provincial units.

(2) Where a designation is not made by the Minister of an employee bargaining agency or an employer bargaining agency under subsection 1 within sixty days after this section comes into force, the Minister may convene a conference of trade unions, councils of trade unions, employers and employers' organizations, as the case may be, for the purpose of obtaining recommendations with respect to the making of a designation. Minister
may convene
conference

(3) The Minister may refer to the Board any question that arises concerning a designation, or any terms or conditions therein, and the Board shall report to the Minister its decision on the question. Reference of
question

Minister
may alter,
etc.,
designation

(4) Subject to sections 128 and 129, the Minister may alter, revoke or amend any designation from time to time and may make another designation.

R.S.O. 1970,
c. 410 does
not apply

(5) *The Regulations Act* does not apply to a designation made under subsection 1.

Application
to Board
by employee
bargaining
agency

128.—(1) During the period between the one hundred and twentieth and the one hundred and eightieth days prior to the termination of a provincial agreement, an employee bargaining agency, whether designated or not, may apply to the Board to be certified to represent in bargaining a provincial unit of affiliated bargaining agents.

Certification
by Board

(2) Where the Board is satisfied that a majority of the affiliated bargaining agents falling within the provincial unit is represented by the employee bargaining agency and that such majority of affiliated bargaining agents holds bargaining rights for a majority of employees that would be bound by a provincial agreement, the Board shall certify the employee bargaining agency.

Application
to Board
by employer
bargaining
agency

129.—(1) During the period between the one hundred and twentieth and the one hundred and eightieth days prior to the termination of a provincial agreement, an employer bargaining agency, whether designated or not, may apply to the Board to be accredited to represent in bargaining a provincial unit of employers for whose employees affiliated bargaining agents hold bargaining rights.

Accreditation
by Board

(2) Where the Board is satisfied that a majority of employers falling within the provincial unit is represented by the employer bargaining agency and that such majority of employers employ a majority of the employees for whom the affiliated bargaining agents hold bargaining rights, the Board shall accredit the employer bargaining agency.

Vesting of
rights,
duties and
obligations

130. Where an employee bargaining agency has been designated under section 127 or certified under section 128 to represent a provincial unit of affiliated bargaining agents, all rights, duties and obligations under this Act of the affiliated bargaining agents for which it bargains shall vest in the employee bargaining agency, but only for the purpose of conducting bargaining and concluding a provincial agreement.

Idem

131. Where an employer bargaining agency has been designated under section 127 or accredited under section 129 to represent a provincial unit of employers,

(a) all rights, duties and obligations under this Act of employers for which it bargains shall vest in the

employer bargaining agency, but only for the purpose of conducting bargaining and concluding a provincial agreement; and

- (b) an accreditation heretofore made under section 115 of an employers' organization as bargaining agent of the employers in the industrial, commercial and institutional sector of the construction industry referred to in clause *e* of section 106 represented or to be represented by the employer bargaining agency is null and void from the time of such designation under section 127 or accreditation under section 129.

132.—(1) Subject to subsection 2, any collective agreement in operation upon the coming into force of this section in respect of employees employed in the industrial, commercial and institutional sector of the construction industry referred to in clause *e* of section 106 and represented by affiliated bargaining agents, is enforceable by and binding on the parties thereto only for the remainder of the term of operation of the agreement, regardless of any provision respecting its renewal. Termination
of collective
agreement

(2) Notwithstanding subsection 1 of section 44, every collective agreement in respect of employees employed in the industrial, commercial and institutional sector of the construction industry referred to in clause *e* of section 106 entered into after the 1st day of January, 1977 and before the 30th day of April, 1978 shall be deemed to expire not later than the 30th day of April, 1978, regardless of any provision respecting its term of operation or its renewal. Idem

(3) Where any collective agreement mentioned in subsection 1 ceases to operate, the affiliated bargaining agent, the employer and the employees for whom the affiliated bargaining agent holds bargaining rights shall be bound by the provincial agreement made between an employee bargaining agency representing the affiliated bargaining agent and the employer bargaining agency representing the employer. Provincial
agreement
binding

(4) After the 30th day of April, 1978, where an affiliated bargaining agent obtains bargaining rights through certification or voluntary recognition in respect of employees employed in the industrial, commercial and institutional sector of the construction industry referred to in clause *e* of section 106, the employer, the affiliated bargaining agent, and the employees for whom the affiliated bargaining agent has obtained bargaining rights are bound by the provincial agreement made between an employee bargaining agency represent- Idem

ing the affiliated bargaining agent and an employer bargaining agency representing a provincial unit of employers in which the employer would have been included.

When provincial agreement ceases to operate

(5) Notwithstanding subsection 1 of section 44, where, under the provisions of this section, an employer, affiliated bargaining agent or employees become bound by a provincial agreement after the agreement has commenced to operate, the agreement ceases to be binding on the employer, affiliated agent or employees in accordance with the terms thereof.

Agency shall make only one agreement

133.—(1) An employee bargaining agency and an employer bargaining agency shall make only one provincial agreement for each provincial unit that it represents.

No agreement other than provincial agreement

(2) On and after the 30th day of April, 1978 and subject to section 132, no person, employee, trade union, council of trade unions, affiliated bargaining agent, employee bargaining agency, employer, employers' organization, group of employers' organizations or employer bargaining agency shall bargain for, attempt to bargain for, or conclude any collective agreement or other arrangement affecting employees represented by affiliated bargaining agents other than a provincial agreement as contemplated by subsection 1, and any collective agreement or other arrangement that does not comply with subsection 1 is null and void.

Expiry of provincial agreement

(3) Every provincial agreement shall provide for the expiry of the agreement on the 30th day of April calculated biennially from the 30th day of April, 1978.

Non-application of s. 43

134.—(1) Section 43 does not apply to a designated or accredited employer bargaining agency or a designated or certified employee bargaining agency.

Provincial agreement binding

(2) A provincial agreement is, subject to and for the purposes of this Act, binding upon the employer bargaining agency, the employers represented by the employer bargaining agency but only in respect of those employees for whom the affiliated bargaining agents hold bargaining rights and who are employed in the industrial, commercial and institutional sector of the construction industry referred to in clause *e* of section 106, the employee bargaining agency, the affiliated bargaining agents represented by the employee bargaining agency, the employees represented by the affiliated bargaining agents and employed in such sector, and upon such employers, affiliated bargaining agents and employees as may be subsequently bound by the said agreement.

(3) Any employee bargaining agency, affiliated bargaining ^{Parties} agent, employer bargaining agency and employer bound by a provincial agreement shall be considered to be a party for the purposes of section 112*a*.

135. The Board shall, upon the application of a trade ^{Power of Board} union, a council of trade unions, or an employer or employers' organization, determine any question that arises as to whether work performed or to be performed by employees is within the industrial, commercial and institutional sector of the construction industry referred to in clause *e* of section 106.

136.—(1) A designated or certified employee bargaining ^{Bargaining agency} agency shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of the ^{not to act in bad faith, etc.} affiliated bargaining agents in the provincial unit of affiliated bargaining agents for which it bargains, whether members of the designated or certified employee bargaining agency or not and in the representation of employees, whether members of an affiliated bargaining agent or not.

(2) A designated or accredited employer bargaining agency ^{Idem} shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employers in the provincial unit of employers for which it bargains, whether members of the designated or accredited employer bargaining agency or not.

137. For the purpose of encouraging the co-ordination ^{Regulations} of bargaining, the Lieutenant Governor in Council may make regulations,

- (a) designating a co-ordinating agency;
- (b) establishing the constitution of a co-ordinating agency to provide for,
 - (i) the objects of the co-ordinating agency,
 - (ii) the appointment of a board of directors,
 - (iii) the fees to be paid by its members,
 - (iv) the duties, responsibilities and privileges of members, and
 - (v) other matters necessary for the operation of the co-ordinating agency.

Constitution
to be
complied
with

138. A co-ordinating agency and its members shall comply with the provisions of its constitution.

Membership
in co-
ordinating
agency

139. Every employer bargaining agency shall be a member of the co-ordinating agency designated in the regulations to co-ordinate bargaining for employer bargaining agencies and shall pay the fees set out in the constitution of that co-ordinating agency.

Exercise of
bargaining
rights

140. No co-ordinating agency shall exercise, or purport to exercise, the bargaining rights held by an employer bargaining agency.

Commence-
ment

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. This Act may be cited as *The Labour Relations Amendment Act, 1977*.

An Act to amend
The Labour Relations Act

1st Reading

March 31st, 1977

2nd Reading

3rd Reading

THE HON. B. STEPHENSON
Minister of Labour

1350
XR
- B 56

BILL 15

Private Member's Bill

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publications

**An Act to regulate Transactions involving the
Purchase of Tax Refunds by Discount**

MR. DAVISON

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The purpose of this Bill is to regulate certain business practices relating to the purchase of tax refunds by discount. The Bill limits the amount of the discount which may be charged when a person enters a transaction of this nature. The Bill requires that the person who purchases a tax refund must pay at least 95 per cent of its value to the person selling his right to the refund.

BILL 15

1977

An Act to regulate Transactions involving the Purchase of Tax Refunds by Discount

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act, "tax refund" means a refund by a government of any jurisdiction of moneys paid by way of tax. ^{Interpretation}

2. No person shall take an assignment of a right to receive a tax refund for consideration given for the assignment of less than 95 per cent of the tax refund payable to the assignor. ^{Limitation of discount}

3. Every assignment of a right to receive a tax refund is not binding unless it contains a statement that the taking of such an assignment for consideration of less than 95 per cent of the tax refund is an offence under this Act. ^{Validity of assignment}

4.—(1) Every person who contravenes section 2 and every director or officer of a corporation who knowingly concurs in such contravention is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both. ^{Offence}

(2) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein. ^{Corporation}

5. This Act comes into force on the day it receives Royal Assent. ^{Commencement}

6. This Act may be cited as *The Tax Refund Discounts Act, 1977*. ^{Short title}

An Act to regulate Transactions
involving the Purchase of Tax
Refunds by Discount

1st Reading

April 4th, 1977

2nd Reading

3rd Reading

MR. DAVISON

(Private Member's Bill)

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BILL 16

Private Member's Bill

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publications

An Act to amend The Ontario Human Rights Code

MRS. CAMPBELL

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTES

The purpose of the Bill is to prohibit discrimination on the basis of an individual's sexual orientation.

SECTION 1. The portion of the preamble as amended would read:

"AND WHEREAS it is public policy in Ontario that every person is free and equal in dignity and rights without regard to race, creed, colour, sex, marital status, sexual orientation, nationality, ancestry or place of origin;"

SECTION 2. Subsection 1 of section 1 as amended would read:

- (1) *No person shall publish or display or cause to be published or displayed or permit to be published or displayed any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against any person or any class of persons for any purpose because of the race, creed, colour, sex, marital status, sexual orientation, nationality, ancestry or place of origin of such person or class of persons.*

SECTION 3. Subsection 1 of section 2 as amended would read:

- (1) *No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall,*
- (a) *deny to any person or class of persons the accommodation, services or facilities available in any place to which the public is customarily admitted; or*
- (b) *discriminate against any person or class of persons with respect to the accommodation, services or facilities available in any place to which the public is customarily admitted,*
- because of the race, creed, colour, sex, marital status, sexual orientation, nationality, ancestry or place of origin of such person or class of persons or of any other person or class of persons.*

SECTION 4. Subsection 1 of section 3 as amended would read:

- (1) *No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall,*
- (a) *deny to any person or class of persons occupancy of any commercial unit or any housing accommodation; or*
- (b) *discriminate against any person or class of persons with respect to any term or condition of occupancy of any commercial unit or any housing accommodation,*
- because of race, creed, colour, sex, sexual orientation, nationality, ancestry or place of origin of such person or class of persons or of any other person or class of persons.*

SECTION 5. Section 4 prohibits discrimination in relation to a series of employment practices. In addition, the section prohibits discriminatory advertising by employers, discrimination in job application procedures and discrimination by employment agencies. The provision as amended would include "sexual orientation" as an unlawful basis of discrimination for the purposes of this section.

The section excepts certain non-profit organizations from compliance where race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin is a *bona fide* occupational qualification and requirement. The section as amended would include "sexual orientation" in the exception.

An Act to amend The Ontario Human Rights Code

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The preamble to *The Ontario Human Rights Code*, being ^{Preamble, amended} chapter 318 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1972, chapter 119, section 1, is further amended by inserting after "status" in the amendment of 1972 "sexual orientation".
2. Subsection 1 of section 1 of the said Act, as amended by ^{s. 1 (1), amended} the Statutes of Ontario, 1972, chapter 119, section 2, is further amended by inserting after "status" in the amendment of 1972 "sexual orientation".
3. Subsection 1 of section 2 of the said Act, as amended by ^{s. 2 (1), amended} the Statutes of Ontario, 1972, chapter 119, section 3, is further amended by inserting after "status" in the amendment of 1972 "sexual orientation".
4. Subsection 1 of section 3 of the said Act, as re-enacted by ^{s. 3 (1), amended} the Statutes of Ontario, 1972, chapter 119, section 4, is amended by inserting after "sex" in the eleventh line "sexual orientation".
- 5.—(1) Subsection 1 of section 4 of the said Act, as re-enacted by ^{s. 4 (1), amended} the Statutes of Ontario, 1972, chapter 119, section 5, is amended by inserting after "status" in the twenty-second line "sexual orientation".
- (2) Subsection 2 of the said section 4 is amended by ^{s. 4 (2), amended} inserting after "status" in the fifth line "sexual orientation".
- (3) Subsection 3 of the said section 4 is amended by ^{s. 4 (3), amended} inserting after "status" in the ninth line "sexual orientation".

- | | |
|-----------------------|---|
| s. 4 (4),
amended | (4) Subsection 4 of the said section 4 is amended by inserting after "colour" in the fifth line and in the eighth line "sexual orientation". |
| s. 4 (5),
amended | (5) Subsection 5 of the said section 4 is amended by inserting after "status" in the third line "sexual orientation". |
| s. 4 (7),
amended | (6) Subsection 7 of the said section 4 is amended by inserting after "status" in the third line "sexual orientation". |
| s. 4a (1),
amended | 6.— (1) Subsection 1 of section 4a of the said Act, as enacted by the Statutes of Ontario, 1972, chapter 119, section 6, is amended by inserting after "status" in the fourth line "sexual orientation". |
| s. 4a (2),
amended | (2) Subsection 2 of the said section 4a is amended by inserting after "status" in the fourth line "sexual orientation". |
| s. 6a,
amended | 7. Section 6a of the said Act, as enacted by the Statutes of Ontario, 1972, chapter 119, section 7, is amended by inserting after "status" in the eighth line "sexual orientation". |
| s. 9 (a),
amended | 8.— (1) Clause a of section 9 of the said Act, as re-enacted by the Statutes of Ontario, 1972, chapter 119, section 9, is amended by inserting after "status" in the fourth line "sexual orientation". |
| s. 9 (c),
amended | (2) Clause c of the said section 9 is amended by inserting after "status" in the fourth line "sexual orientation". |
| Commence-
ment | 9. This Act comes into force on the day it receives Royal Assent. |
| Short title | 10. This Act may be cited as <i>The Ontario Human Rights Code Amendment Act, 1977</i> . |

SECTION 6. Section 4a as amended would read:

- 4a.—(1) *No trade union shall exclude from membership or expel or suspend any person or member or discriminate against any person or member because of race, creed, colour, age, sex, marital status, sexual orientation, nationality, ancestry or place of origin.*
- (2) *No self-governing profession shall exclude from membership or expel or suspend any person or member or discriminate against any person or member because of race, creed, colour, age, sex, marital status, sexual orientation, ancestry or place of origin.*

SECTION 7. Section 6a as amended would read:

- 6a. *Notwithstanding the provisions of this Part, the Commission may, upon conditions or limitations and subject to revocation or suspension, approve in writing any special plan or program by the Crown or any agency thereof or any person to increase the employment of members of a group or class of persons because of the race, creed, colour, age, sex, marital status, sexual orientation, nationality or place of origin of the members of the group or class of persons.*

SECTION 8. Clauses a' and c' of section 9 as amended would read:

9. *The Commission shall administer this Act and, without limiting the generality of the foregoing, the Commission shall,*
- (a) *forward the principle that every person is free and equal in dignity and rights without regard to race, creed, colour, age, sex, marital status, sexual orientation, nationality, ancestry or place of origin;*
-
- (c) *develop and conduct research and educational programs designed to eliminate discriminatory practices related to race, creed, colour, age, sex, marital status, sexual orientation, nationality, ancestry or place of origin;*
-

An Act to amend
The Ontario Human Rights Code

1st Reading

April 4th, 1977

2nd Reading

3rd Reading

Mrs. CAMPBELL

(Private Member's Bill)

42-10
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BILL 17

Private Member's Bill

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publications

An Act to amend The Public Utilities Act

MR. NEWMAN (Windsor-Walkerville)

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The purpose of the Bill is to provide for a review before a public utility can shut off water, hydro, gas or oil and telephone.

BILL 17

1977

An Act to amend The Public Utilities Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 3 of section 27 of *The Public Utilities Act*, ^{s. 27 (3), amended} being chapter 390 of the Revised Statutes of Ontario, 1970, is amended by adding at the commencement thereof "Subject to section 27b".
2. The said Act is amended by adding thereto the following ^{ss. 27a, 27b, enacted} sections:

27a.—(1) In this section, "Board" means the Public ^{Interpre-}Utilities Review Board. ^{tation}

(2) A board to be known as the "Public Utilities Review ^{Board} Board" is hereby established and shall consist of not fewer than three persons appointed by the Lieutenant Governor in Council.

(3) The Lieutenant Governor in Council may designate ^{Chairman} one of the members to be chairman of the Board.

(4) One member of the Board constitutes a quorum. ^{Quorum}

(5) The Lieutenant Governor in Council may fill any ^{Vacancies} vacancy among the members of the Board.

(6) The Board shall hold such hearings and perform such ^{Hearings} other duties as are assigned to it by or under this Act.

27b.—(1) No corporation shall shut off a supply of a public ^{Hearing} utility under section 27 unless a hearing has been held to determine that the supply should be shut off.

(2) Where a corporation determines to shut off a supply ^{Notice} under section 27, it shall cause notice of the proposed shut off to be given to all parties that may be affected, indi-

cating that a hearing will be held by the Board within thirty days from the date of the notice.

Application
of 1971, c. 47

(3) Part I of *The Statutory Powers Procedure Act, 1971* applies to a hearing under subsection 1.

Board may
combine
hearings

(4) The Board may combine two or more related hearings and conduct them in all respects and for all purposes as one hearing.

Decision
final

(5) A decision of the Board is final, except as to questions of law.

Commence-
ment

3. This Act comes into force on the day it receives Royal Assent.

Short title

4. This Act may be cited as *The Public Utilities Amendment Act, 1977*.

An Act to amend
The Public Utilities Act

1st Reading

April 4th, 1977

2nd Reading

3rd Reading

MR. NEWMAN (Windsor-Walkerville)

(Private Member's Bill)

4TH SESSION, 30TH LEGISLATURE, ~~ONTARIO~~
26 ELIZABETH II, 1977

Government
Publications

**An Act to relieve Persons from Liability in respect of
voluntary Emergency Medical and First Aid Services**

MR. HAGGERTY

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The purpose of this Bill is to relieve persons from liability in respect of voluntary emergency first aid assistance or medical services rendered at or near the scene of an accident or other sudden emergency.

BILL 18

1977

**An Act to relieve Persons from
Liability in respect of voluntary
Emergency Medical and First Aid Services**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

(a) "physician" means a legally qualified medical practitioner;

(b) "registered nurse" has the same meaning as defined in section 69 of *The Health Disciplines Act, 1974*. 1974, c. 47

2. Where, in respect of a person who is ill, injured or unconscious as the result of an accident or other sudden emergency,

Relief
from
liability
for
damages

(a) a physician or registered nurse voluntarily and without expectation of compensation or reward renders emergency medical services or first aid assistance and such services or assistance are not rendered at a hospital or other place having adequate medical facilities and equipment; or

(b) a person other than a person mentioned in clause a voluntarily renders emergency first aid assistance and such assistance is rendered at the immediate scene of the accident or emergency,

the physician, registered nurse or other person shall not be liable for damages for injuries to or the death of such person alleged to have been caused by an act or omission on his part in rendering the medical services or first aid assistance, unless such acts constitute wilful or wanton misconduct on his part.

Act does
not apply
to normal
medical
services

3. Nothing in section 2 shall be deemed to relieve a physician from liability for damages for injuries to or the death of any person caused by an act or omission on the part of the physician in respect of medical services rendered by him in the normal and ordinary course of his practice and not under the circumstances set forth in section 2.

Commence-
ment

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. This Act may be cited as *The Good Samaritan Act, 1977*.

An Act to relieve Persons from Liability
in respect of voluntary Emergency Medical
and First Aid Services

1st Reading

April 4th, 1977

2nd Reading

3rd Reading

MR. HAGGERTY

(Private Member's Bill)

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BILL 19

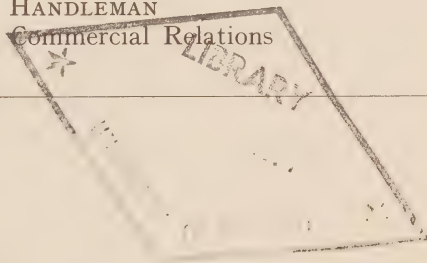
Government Bill

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publications

**An Act to regulate
Trading in Commodity Futures Contracts**

THE HON. S. B. HANDLEMAN
Minister of Consumer and Commercial Relations



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

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EXPLANATORY NOTE

The purpose of the Bill is to regulate, under the Ontario Securities Commission, trading in commodity futures contracts and in those commodity futures options on which performance is guaranteed by a commodity futures exchange or its clearing house by:

1. except for *bona fide* hedging transactions, permitting to be traded in Ontario only those commodity futures contracts and exchange or clearing house guaranteed commodity futures options,
 - i. entered into on a commodity futures exchange registered with or "recognized" by the Ontario Securities Commission; and
 - ii. the form of which has been "accepted" for trading in Ontario by the Director of the Ontario Securities Commission;
2. registering those persons who act as dealers or advisers;
3. providing a regulatory framework within which any commodity futures exchange that might be established in Ontario would be supervised.

Dealt with as securities under *The Securities Act*, would be commodity futures options which are not traded on commodity futures exchanges recognized or registered by the Ontario Securities Commission under *The Commodity Futures Act, 1977*, margin account type contracts, and options on physical commodities offered to the public. Trades in these securities, except those effected by *bona fide* hedgers, would be subject to the registration and prospectus filing requirements of *The Securities Act*.

BILL 19

1977

An Act to regulate Trading in Commodity Futures Contracts

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Interpre-
tation

1. In this Act,

1. "adviser" means a person or company engaging in or holding himself or itself out as engaging in the business of advising others as to trading in contracts;
2. "*bona fide* hedging transaction" means a purchase or sale of a commodity by way of a commodity futures contract or the acquisition of a right, under a commodity futures option, to enter into a commodity futures contract for the *bona fide* purpose of offsetting the price risks incidental to cash or spot commodity purchases or sales that are a necessary part of the hedger's agricultural, mining, forestry, fishing, processing, manufacturing or commercial activities, under which the hedger,
 - (a) assumes or acquires the right to assume,
 - (i) a short position in relation to a commodity futures contract offset by the present ownership or purchase at a fixed price of,
 - A. a like quantity of the commodity to be delivered under the commodity futures contract,
 - B. an equivalent quantity of a product or by-product of the commodity to be delivered under the commodity futures contract, or

- C. an equivalent quantity of a product from which the commodity to be delivered under the commodity futures contract is derived,
- (ii) a long position in relation to a commodity futures contract that is offset by the forward sale at a fixed price of,
 - A. a like quantity of the commodity to be delivered under the commodity futures contract,
 - B. an equivalent quantity of a product or by-product of the commodity to be delivered under the commodity futures contract, or
 - C. an equivalent quantity of a product from which the commodity to be delivered under the commodity futures contract is derived,
- (iii) a short position in relation to a commodity futures contract offset by a like quantity of the commodity to be delivered under the commodity futures contract the person or company is raising or producing or intends to raise or produce within the next twelve months on or from land owned or leased by that person or company,
- (iv) a long position in relation to a commodity futures contract to fill the anticipated requirements of a processor or manufacturer for the commodity to be delivered under the commodity futures contract or the equivalent quantity of a product or by-product of such commodity for a period of not more than twelve months, or
- (v) liquidating trades in relation to positions assumed in any of the cir-

cumstances set forth in the foregoing,
and

- (b) establishes and liquidates such positions in an orderly manner in accordance with sound commercial practices and in conformity with such regulations as may be prescribed under this Act;
- 3. "clearing house" means an association or organization, whether incorporated or unincorporated, or part of a commodity futures exchange through which trades in contracts entered into on such exchange are cleared;
- 4. "Commission" means the Ontario Securities Commission;
- 5. "commodity" means, whether in the original or a processed state, any agricultural product, forest product, product of the sea, mineral, metal, hydro-carbon fuel, currency or precious stone or other gem, and any goods, article, service, right or interest, or class thereof, designated as a commodity under the regulations;
- 6. "commodity futures contract" means a contract to make or take delivery of a specified quantity and quality, grade or size of a commodity during a designated future month at a price agreed upon when the contract is entered into on a commodity futures exchange pursuant to standardized terms and conditions set forth in such exchange's by-laws, rules or regulations;
- 7. "commodity futures exchange" means an association or organization, whether incorporated or unincorporated, operated for the purpose of providing the physical facilities necessary for the trading of contracts by open auction;
- 8. "commodity futures option" means a right, acquired for a consideration, to assume a long or short position in relation to a commodity futures contract at a specified price and within a specified period of time and any other option of which the subject is a commodity futures contract;
- 9. "company" means any corporation, incorporated association, incorporated syndicate or other incorporated organization;

10. "contract" means any commodity futures contract and any commodity futures option;
11. "daily price limits", where used in relation to commodity futures contracts, means the maximum fluctuation in the price at which commodity futures contracts relating to a particular commodity may be entered into during one trading session of a commodity futures exchange pursuant to the by-laws, rules or regulations of the exchange;
12. "daily trading limits", where used in relation to commodity futures contracts, means the maximum number of commodity futures contracts relating to a particular commodity a person or company may be permitted to trade in one day pursuant to the by-laws, rules or regulations of a commodity futures exchange, a direction, decision, order or ruling of that government or agency thereof to the regulation of which the exchange is subject including a decision of the Commission under subsection 2 of section 20, or a decision of the Commission under section 38;
13. "dealer" means a person or company that trades in contracts in the capacity of principal or agent;
14. "decision" means a direction, decision, order, ruling or other requirement made under a power or right conferred by this Act or the regulations;
15. "declaration date", where used in relation to a commodity futures option, means that date on which the option expires;
16. "delivery month", where used in relation to a commodity futures contract, means the designated month within which a commodity futures contract matures and settlement can be effected by the tender and receipt of the commodity or of an instrument evidencing title or the right to such commodity;
17. "Director" means the Director or any Deputy Director of the Commission;
18. "file" means deliver to the Commission;
19. "floor trader" means an individual who is employed by a dealer for the purpose of entering into con-

tracts on the floor of a commodity futures exchange on behalf of such dealer;

20. "liquidating trade" means effecting settlement of a commodity futures contract,
 - (a) in relation to a long position, by assuming an offsetting short position in relation to a contract entered into on the same commodity futures exchange for a like quantity and quality, grade or size of the same commodity deliverable during the same designated future month;
 - (b) in relation to a short position, by assuming an offsetting long position in relation to a contract entered into on the same commodity futures exchange for a like quantity and quality, grade or size of the same commodity deliverable during the same designated future month;
21. "long position", where used in relation to a commodity futures contract, means to be under an obligation to take delivery;
22. "margin" means the minimum dollar amount per contract prescribed under the rules and regulations of the commodity futures exchange on which the contract was entered into or by the Commission that must be deposited with a member of the commodity futures exchange for the purpose of ensuring performance of obligations under the contract;
23. "Minister" means the Minister of Consumer and Commercial Relations or other member of the Executive Council to whom the administration of this Act may be assigned;
24. "misrepresentation" means an untrue statement of material fact or an omission to state a material fact;
25. "officer" means the chairman or any vice-chairman of the board of directors, the president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer or general manager of a company, or any other person designated an officer of a company by by-law or similar authority;

26. "open commodity futures contract" means an outstanding obligation under a commodity futures contract for which settlement has not been effected by the tender and receipt of the commodity or of an instrument evidencing title or the right to such commodity or by a liquidating trade ;
27. "open interest", where used in relation to commodity futures contracts, means the total outstanding long positions or the total outstanding short positions, for each delivery month and in aggregate, in commodity futures contracts relating to a particular commodity entered into on a commodity futures exchange ;
28. "person" means an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator, or other legal representative ;
29. "position limits", where used in relation to commodity futures contracts, means the maximum amount of any particular commodity with respect to which a person or company may at any time be in long positions or short positions under commodity futures contracts pursuant to the by-laws, rules or regulations of a commodity futures exchange, a direction, decision, order or ruling of that government or agency thereof to the regulation of which the exchange is subject including a decision of the Commission under subsection 2 of section 20, or a decision of the Commission under section 38 ;
30. "premium", where used in relation to a commodity futures option, means the consideration for which the option is acquired ;
31. "register" means register under this Act, and "registered" has a corresponding meaning ;
32. "registrant" means a person or company registered or required to be registered under this Act ;
33. "regulations" means the regulations made under this Act ;
34. "salesman" means an individual who is employed by a dealer for the purpose of making trades in contracts on behalf of such dealer ;

35. "Secretary" means the Secretary of the Commission or any individual designated by the Commission to act in the capacity of Secretary;
36. "security" means a security within the meaning of *The Securities Act, 1977*; 1977, c. ...
37. "settlement price", where used in relation to a commodity futures contract, means the price which is used by a commodity futures exchange or its clearing house to determine, daily, the net gains or losses in the value of open commodity futures contracts;
38. "short position", where used in relation to a commodity futures contract, means to be under an obligation to make delivery;
39. "striking price", where used in relation to a commodity futures option, means the price at which the purchaser of the option has the right to assume a long or short position in relation to the commodity futures contract that is the subject of the option;
40. "trade" or "trading" includes,
 - (a) entering into contracts, whether as principal or agent;
 - (b) acting as a floor trader;
 - (c) any receipt by a registrant of an order to effect a transaction in a contract;
 - (d) any assignment or other disposition of rights under a contract except a disposition arising from the death of an individual enjoying rights under a contract; and
 - (e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of the foregoing;
41. "undermargined" means the circumstances where deposits are, at any time, below the minimum margin prescribed under the rules or regulations of the commodity futures exchange upon which a contract was entered into or by the Commission.

PART I

COMMODITY FUTURES ADVISORY BOARD

Commodity
Futures
Advisory
Board

2.—(1) There shall be a board of not more than five members to be known as The Commodity Futures Advisory Board, the members of which shall be appointed by the Lieutenant Governor in Council and the Lieutenant Governor in Council may designate one of the members to be chairman.

Meetings

(2) The Commodity Futures Advisory Board shall meet at the call of the Commission.

Duties

(3) The Commodity Futures Advisory Board shall, when requested by the Commission, consult with and advise the Commission concerning,

- (a) developments in the nature of contracts and manner of trading; and
- (b) the influence of trading in contracts on the economy of Ontario.

Remunera-
tion

(4) The members of The Commodity Futures Advisory Board shall serve without remuneration, but the Lieutenant Governor in Council may fix a *per diem* allowance to be payable to each member, and every member is entitled to his reasonable and necessary expenses, as certified by the chairman, for attending at meetings and transacting the business of the Board.

PART II

APPOINTMENT OF EXPERTS

Appointment
of experts

3.—(1) The Commission may appoint one or more experts to assist the Commission in such manner as it may consider expedient.

Submissions
to experts

(2) The Commission may submit any agreement, contract, financial statement, report or other document to one or more experts appointed under subsection 1 for examination, and the Commission has the like power to summon and enforce the attendance of witnesses before the expert and to compel them to produce documents, records and things as is vested in the Commission, and subsections 3 and 4 of section 7 apply *mutatis mutandis*.

Payment of
experts

(3) An expert appointed under subsection 1 shall be paid such amounts for services and expenses as the Lieutenant Governor in Council may determine.

PART III

ADMINISTRATIVE PROCEEDINGS, REVIEWS AND APPEALS

4.—(1) The Director shall forthwith notify the Commission ^{Notification of decision} of every decision refusing registration under section 23 or refusing to accept the form of a contract under section 36 and the Commission may, within thirty days of the decision, notify the Director and any person or company directly affected of its intention to convene a hearing to review the decision.

(2) Any person or company directly affected by a decision ^{Review of Director's decisions} of the Director may, by notice in writing sent by registered mail to the Commission within thirty days after the mailing of the notice of the decision, request and be entitled to a hearing and review thereof by the Commission.

(3) Upon a hearing and review, the Commission may by ^{Power on review} order confirm the decision under review or make such other decision as the Commission considers proper.

(4) Notwithstanding that a person or company requests ^{Stay} a hearing and review under subsection 2, the decision under review takes effect immediately, but the Commission may grant a stay until disposition of the hearing and review.

5.—(1) Any person or company directly affected by a ^{Appeal} decision of the Commission, may appeal to the Supreme Court.

(2) Notwithstanding that an appeal is taken under this ^{Stay} section, the decision appealed from takes effect immediately, but the Commission or the Divisional Court may grant a stay until disposition of the appeal.

(3) The Secretary shall certify to the Registrar of the ^{Certification of documents} Supreme Court,

- (a) the decision that has been reviewed by the Commission;
- (b) the decision of the Commission, together with any statement of reasons therefor;
- (c) the record of the proceedings before the Commission; and
- (d) all written submissions to the Commission or other material that is relevant to the appeal.

Minister
entitled to
be heard

(4) The Minister is entitled to be heard by counsel or otherwise upon the argument of an appeal under this section.

Powers of
court on
appeal

(5) Where an appeal is taken under this section, the court may by its order direct the Commission to make such decision or to do such other act as the Commission is authorized and empowered to do under this Act or the regulations and as the court considers proper, having regard to the material and submissions before it and to this Act and the regulations, and the Commission shall make such decision or do such act accordingly.

Further
decisions

(6) Notwithstanding an order of the court, on an appeal, the Commission may make any further decision upon new material or where there is a significant change in the circumstances, and every such decision is subject to this section.

Secretary

6.—(1) The Secretary may,

- (a) accept service of all notices or other documents on behalf of the Commission;
- (b) when authorized by the Commission, sign any decision made by the Commission as a result of a hearing;
- (c) certify under his hand any decision made by the Commission or any document, record or thing used in connection with any hearing by the Commission where certification is required for a purpose other than that stated in subsection 3 of section 5; and
- (d) exercise such other powers as are vested in him by this Act or the regulations and perform such other duties as are imposed upon him by this Act or the regulations or by the Commission.

Certification
by
Secretary

(2) A certificate purporting to be signed by the Secretary is, without proof of the office or signature certifying, admissible in evidence, so far as is relevant, for all purposes in any action, proceeding or prosecution.

PART IV

INVESTIGATIONS

Investiga-
tion order

7.—(1) Where upon a statement made under oath it appears probable to the Commission that any person or company has,

- (a) contravened any of the provisions of this Act or the regulations; or
- (b) committed an offence under the *Criminal Code* R.S.C. 1970, c. C-34 (Canada) in connection with a transaction relating to contracts,

the Commission may, by order, appoint any person to make such investigation as it considers expedient for the due administration of this Act, and in the order shall determine and prescribe the scope of the investigation.

(2) The Commission may, by order, appoint any person to make such investigation as it considers expedient for the due administration of this Act or into any matter relating to trading in contracts, and in such order shall determine and prescribe the scope of the investigation. Investigation order

(3) For the purposes of any investigation ordered under this section, the person appointed to make the investigation may investigate, inquire into and examine, Scope of investigation

- (a) the affairs of the person or company in respect of which the investigation is being made and any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with such person or company and any property, assets or things owned, acquired or alienated in whole or in part by such person or company or by any person or company acting on behalf of or as agent for such person or company; and
- (b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with any such person or company and the relationship that may at any time exist or have existed between such person or company and any other person or company by reason of investments, commissions promised, secured or paid, interests held or acquired, the loaning or borrowing of money, securities or other property, the transfer, negotiation or holding of securities, interlocking directorates, common control, undue influence or control or any other relationship.

- Powers to summon witnesses and require production (4) The person making an investigation under this section has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Supreme Court for the trial of civil actions, and the failure or refusal of a person to attend, to answer questions or to produce such documents, records and things as are in his custody or possession makes the person liable to be committed for contempt by a judge of the Supreme Court as if in breach of an order or judgment of the Supreme Court provided that no provision of *The Evidence Act* exempts any bank or any officer or employee thereof from the operation of this section.
- R.S.O. 1970, c. 151
- Counsel (5) A person giving evidence at an investigation under this section may be represented by counsel.
- Seizure of property (6) Where an investigation is ordered under this section, the person appointed to make the investigation may seize and take possession of any documents, records, securities, contracts or other property of the person or company whose affairs are being investigated.
- Inspection of seized documents (7) Where any documents, records, securities, contracts or other property are seized under subsection 6, such documents, records, securities, contracts or other property shall be made available for inspection and copying by the person or company from whom seized at a mutually convenient time and place if a request for an opportunity to inspect or copy is made by such person or company to the person appointed to make the investigation.
- Accountants and experts (8) Where an investigation is ordered under this section, the Commission may appoint an accountant or other expert to examine documents, records, properties and matters of the person or company whose affairs are being investigated.
- Report of investigation (9) Every person appointed under subsection 1, 2 or 8 shall provide the Commission with a full and complete report of the investigation including any transcript of evidence and material in his possession relating to the investigation.
- Report to Minister 8. Where, upon the report of an investigation made under section 7, it appears to the Commission that any person or company may have,
- (a) contravened any of the provisions of this Act or the regulations; or

- (b) committed an offence under the *Criminal Code* R.S.C. 1970,
c. C-34 (Canada) in connection with a transaction relating to contracts,

the Commission shall send a full and complete report of the investigation, including the report made to it, any transcript of evidence and any material in the possession of the Commission relating thereto, to the Minister.

9. Notwithstanding section 7, the Minister may, by Investigation by order of Minister order, appoint any person to make such investigation as the Minister considers expedient for the due administration of this Act or into any matter relating to trading in contracts, in which case the person so appointed, for the purposes of the investigation, has the same authority, powers, rights and privileges as a person appointed under section 7.

10. No person, without the consent of the Commission, Evidence not to be disclosed shall disclose, except to his counsel, any information or evidence obtained or the name of any witness examined or sought to be examined under section 7 or 9.

11. Where an investigation has been made under section 7, Report to Minister the Commission may, and, where an investigation has been made under section 9, the person making the investigation shall report the result thereof, including the evidence, findings, comments and recommendations, to the Minister, and the Minister may cause the report to be published in whole or in part in such manner as he considers proper.

12.—(1) The Commission may,

Order to freeze property

- (a) where it is about to order an investigation in respect of a person or company under section 7 or during or after an investigation in respect of a person or company under section 7 or 9;
- (b) where it is about to make or has made a decision suspending or cancelling the registration of any person or company or affecting the right of any person or company to trade in contracts; or
- (c) where criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any person or company, that in the opinion of the Commission are connected with or arise out of any contract or any trade therein, or out of any business conducted by such person or company,

in writing or by telegram direct any person or company having on deposit or under control or for safekeeping any funds or securities of the person or company referred to in clause *a*, *b* or *c* to hold such funds or securities or direct the person or company referred to in clause *a*, *b* or *c* to refrain from withdrawing any such funds or securities from any other person or company having any of them on deposit, under control or for safekeeping or to hold all funds or securities of clients or others in his possession or control in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the *Bankruptcy Act* (Canada), *The Judicature Act*, *The Corporations Act*, *The Business Corporations Act*, the *Winding-up Act* (Canada) or section 13 of this Act, or until the Commission in writing revokes the direction or consents to release any particular fund or security from the direction, provided that no such direction applies to funds or securities in a commodity futures exchange clearing house, stock exchange clearing house or to securities in process of transfer by a transfer agent unless the direction expressly so states, and in the case of a bank, loan or trust company, the direction applies only to the offices, branches or agencies thereof named in the direction.

R.S.C. 1970,
cc. B-4, W-11,
R.S.O. 1970,
cc. 228, 89,
53

Applica-
tion for
directions

(2) Any person or company named in a direction issued under subsection 1 may, if in doubt as to the application of the direction to particular funds or securities, apply to the Commission for an order of clarification.

Revocation
or amend-
ment of
direction

(3) Upon the application of a person or company directly affected by a direction issued under subsection 1, the Commission may make an order on such terms and conditions as it may impose revoking the direction or consenting to the release of any fund or security.

Appointment
of receiver,
etc.

13.—(1) The Commission may,

- (a) where it is about to order an investigation in respect of a person or company under section 7 or during or after an investigation in respect of a person or company under section 7 or 9;
- (b) where it is about to make or has made a decision suspending or cancelling the registration of any person or company or affecting the right of any person or company to trade in contracts;
- (c) where criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any person or company that in the opinion of the Com-

mission are connected with or arise out of any contract or any trade therein, or out of any business conducted by such person or company; or

- (d) where a person or company fails or neglects to comply with the minimum net asset requirements, investment restrictions, ownership restrictions, or capital requirements prescribed by the regulations for such person or company,

apply to a judge of the Supreme Court for the appointment of a receiver, receiver and manager, trustee or liquidator of the property of such person or company.

(2) Upon an application under subsection 1, the judge ^{Appointment} may, where he is satisfied that the appointment of a receiver, receiver and manager, trustee or liquidator of all or any part of the property of any person or company is in the best interests of the creditors of any such person or company or of persons or companies any of whose property is in the possession or under the control of such person or company, appoint a receiver, receiver and manager, trustee or liquidator of the property of such person or company.

(3) Upon an *ex parte* application made by the Commission ^{*Ex parte* application} under this section, the judge may make an order under subsection 2 appointing a receiver, receiver and manager, trustee or liquidator for a period not exceeding fifteen days.

(4) A receiver, receiver and manager, trustee or liquidator ^{Powers of receiver, etc.} of the property of any person or company appointed under this section shall be the receiver, receiver and manager, trustee or liquidator of all or any part of the property belonging to the person or company or held by the person or company on behalf of or in trust for any other person or company, and the receiver, receiver and manager, trustee or liquidator shall have authority, if so directed by the judge, to wind up or manage the business and affairs of the person or company and all powers necessary or incidental thereto.

(5) An order made under this section may be enforced ^{Enforcement of order} in the same manner as any order or judgment of the Supreme Court and may be varied or discharged upon an application made by notice.

(6) Upon an application made under this section, the rules ^{Rules of practice} of practice of the Supreme Court apply.

PART V

AUDITS

Audits by
Commission

14.—(1) Notwithstanding anything in sections 15, 16, 17 and 18, the Commission may in writing appoint any person to examine at any time the financial affairs of a registrant or a clearing house of a commodity futures exchange in Ontario and prepare such financial or other statements and reports that may be required by the Commission.

Access to
records

(2) The person making an examination under this section may inquire into and examine all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the registrant or clearing house whose financial affairs are being examined, and no registrant or clearing house shall withhold, destroy, conceal or refuse to give any information or thing reasonably required for the purpose of the examination.

Fees

(3) The Commission may charge such fees as may be prescribed by the regulations for any examination made under this section.

PART VI

SELF REGULATION—GENERALLY

Self-
regulatory
bodies

15.—(1) The Commission may recognize in writing an association or organization composed of registrants, whether incorporated or unincorporated, as a self-regulatory body where it is satisfied that to do so would be in the public interest and that the association or organization has satisfied or can satisfy all conditions with respect to self-regulatory bodies prescribed under the regulations.

Idem

(2) A self-regulatory body recognized under subsection 1 shall, subject to this Act and the regulations and any decision made by the Commission, regulate the standards and business conduct of its members.

Commission's
powers

(3) The Commission may, where it appears to it to be in the public interest, make any decision,

(a) with respect to any by-law, rule or regulation or proposed by-law, rule or regulation of a self-regulatory body recognized under subsection 1;

(b) with respect to any direction, decision, order or ruling made under any by-law, rule or regulation of a self-regulatory body recognized under subsection 1; or

- (c) with respect to any practice of a self-regulatory body recognized under subsection 1.

(4) Any person or company directly affected by any direction, decision, order or ruling made under any by-law, rule or regulation of a self-regulatory body recognized under subsection 1 may apply to the Commission for a hearing and review thereof and section 4 applies to the hearing and review in the same manner as to the hearing and review of a decision of the Director.

16. Every commodity futures exchange in Ontario granted registration by the Commission under section 19 and every self-regulatory body recognized by the Commission under section 15 shall,

- (a) select a panel of auditors, each of whom shall have practised as such in Ontario for not fewer than five years and shall be known as a panel auditor or members' auditor; and
- (b) employ an exchange auditor, association or organization auditor, as the case may be, whose appointment is subject to the approval of the Commission, and the appointee shall be an auditor who has practised as such in Ontario for not fewer than ten years.

17.—(1) Every commodity futures exchange in Ontario granted registration by the Commission and every self-regulatory body recognized by the Commission shall cause each member of such class or classes of their members as the Commission may designate in writing to appoint an auditor from the panel of auditors selected under clause *a* of section 16 and such auditor shall make the examination of the financial affairs of such member as called for by the by-laws, rules or regulations applicable to members of such class or classes and shall report thereon to the exchange auditor, association or organization auditor, as the case may be.

(2) The by-laws, rules and regulations of every commodity futures exchange in Ontario granted registration by the Commission and the by-laws, rules and regulations of every self-regulatory body recognized by the Commission in respect of the practice and procedure of the examinations under subsection 1 are subject to the approval of the Commission and the actual conduct of the examinations shall be satisfactory to the Commission.

Filing of
financial
statements
of registrants

18. Every registrant whose financial affairs are not subject to examination under section 17 shall keep such books and records as are necessary for the proper recording of his business transactions and financial affairs and shall deliver to the Commission annually and at such other time or times as the Commission may require a financial statement satisfactory to the Commission as to his financial position, certified by such registrant or an officer or partner of such registrant and reported upon by the auditor of such registrant, and shall deliver to the Commission such other information as the Commission may require in such form as it may prescribe.

PART VII

COMMODITY FUTURES EXCHANGES IN ONTARIO

Commodity
futures
exchanges in
Ontario

19.—(1) No person or company shall carry on business as a commodity futures exchange in Ontario unless such commodity futures exchange is registered as a commodity futures exchange.

Registration

(2) Upon application by or on behalf of a commodity futures exchange, the Commission shall grant registration to a commodity futures exchange for the purposes of subsection 1 where it is satisfied that to do so would not be prejudicial to the public interest and that,

- (a) the exchange or its clearing house guarantee that all obligations, including those to customers of defaulting members, arising out of contracts entered into on such commodity futures exchange will be met;
- (b) the clearing arrangements made and the financial condition of the commodity futures exchange and its clearing house are such as to ensure that the guarantee referred to in clause *a* can be honoured;
- (c) the rules and regulations applicable to exchange members and clearing house members are in the public interest and are actively enforced;
- (d) floor trading practices are fair and properly supervised;
- (e) adequate measures have been taken to prevent manipulation and excessive speculation;
- (f) adequate provision has been made to record and publish details of trading including volume and open interest; and

- (g) the commodity futures exchange has satisfied or can satisfy all conditions prescribed under the regulations for the conduct of the business of a commodity futures exchange.

(3) The Commission shall not refuse to grant registration ^{Hearing} to a commodity futures exchange for the purposes of subsection 1 without giving the applicant an opportunity to be heard.

20.—(1) Every commodity futures exchange in Ontario ^{Filing of} and its clearing house shall file with the Commission all ^{by-laws, etc.} by-laws, rules, regulations and policies as soon as practicable and in any event within five days of the date on which the by-law, rule, regulation or policy is approved by the board of directors of the commodity futures exchange or its clearing house and prior to approval by the membership of the commodity futures exchange or clearing house.

(2) The Commission may, where it appears to it to be in ^{Commission's} the public interest, make any decision, ^{powers}

- (a) with respect to the manner in which any commodity futures exchange or its clearing house carries on business;
- (b) with respect to any by-law, rule or regulation of any such commodity futures exchange or its clearing house; or
- (c) with respect to trading on or through the facilities of any such commodity futures exchange or with respect to any contract traded on any such commodity futures exchange including the setting of levels of margin, daily price limits, daily trading limits and position limits.

(3) Any person or company directly affected by any ^{Review of} direction, order or decision made under any by-law, rule or ^{decision of} regulation of a commodity futures exchange in Ontario or ^{commodity} its clearing house may apply to the Commission for a hearing ^{futures} and review thereof and section 4 applies to the hearing and ^{exchange} review in the same manner as to the hearing and review of a decision of the Director.

21. Every commodity futures exchange and its clearing ^{Records and} house in Ontario shall keep such records as are necessary ^{reports} for the proper recording of each transaction on such exchange and shall,

- (a) supply to any customer of any member of such commodity futures exchange, upon production of a written confirmation of any transaction with such member, particulars of the time at which the transaction took place and verification or otherwise of the matters set forth in the confirmation; and
- (b) deliver to the Commission at such time or times as the Commission may require reports as to transactions on such exchange in such form as the Commission may prescribe.

PART VIII

REGISTRATION FOR TRADING, ACTING AS ADVISER

Registration
for trading

22.—(1) No person or company shall,

- (a) trade in a contract unless such person or company is registered as a dealer or is registered as a salesman or floor trader or as a partner or as an officer of a registered dealer and is acting on behalf of such dealer;
- (b) act as an adviser unless such person or company is registered as an adviser, or is registered as a partner or as an officer of a registered adviser and is acting on behalf of such adviser,

and such registration has been made in accordance with this Act and the regulations and such person or company has received written notice of such registration from the Director and, where such registration is subject to terms and conditions, the person or company complies with such terms and conditions.

Termination
re salesman
and floor
trader

(2) The termination of the employment of a salesman or floor trader with a registered dealer shall operate as a suspension of the registration of the salesman or floor trader until notice in writing has been received by the Director from another registered dealer of the employment of the salesman or floor trader by such other registered dealer and the reinstatement of the registration has been approved by the Director.

Non-trading
employee

(3) The Director may designate as non-trading any employee or class of employees of a registered dealer that does not usually trade in contracts, but the designation may be cancelled as to any employee or class of employees where the

Director is satisfied that any such employee or any member of such class of employees should be required to apply for registration as a salesman.

23.—(1) The Director shall grant registration, renewal of registration, reinstatement of registration or amendment to registration to an applicant except where, Granting of registration

- (a) having regard to the applicant's financial position, he cannot reasonably be expected to be financially responsible in the conduct of his business;
- (b) the past conduct of the applicant, or the officers, directors or partners of the applicant, affords reasonable grounds for belief that his business will not be carried on in accordance with law and with integrity and honesty; or
- (c) the applicant is or will be carrying on activities that are in contravention of this Act or the regulations.

(2) The Director may in his discretion restrict a registration by imposing terms and conditions thereon and, without limiting the generality of the foregoing, may restrict the duration of a registration and may restrict the registration to trades in a certain class of contracts. Terms and conditions

(3) The Director shall not refuse to grant, renew, reinstate or amend registration or impose terms and conditions thereon without giving the applicant an opportunity to be heard. Refusal

24.—(1) The Commission, after giving a registrant an opportunity to be heard, may suspend, cancel, restrict or impose terms and conditions upon the registration or reprimand the registrant where in its opinion such action is in the public interest. Suspension, cancellation, etc.

(2) Where the delay necessary for a hearing under subsection 1 would, in the opinion of the Commission, be prejudicial to the public interest, the Commission may suspend the registration without giving the registrant an opportunity to be heard, in which case it shall forthwith notify the registrant of the suspension and of a hearing and review to be held before the Commission within fifteen days of the date of the suspension, which hearing and review shall be deemed to be a hearing and review under section 4. Interim suspension

(3) Notwithstanding subsection 1, the Commission may, upon an application by a registrant, accept, subject to such Surrender

terms and conditions as it may impose, the voluntary surrender of the registration of the registrant where it is satisfied the financial obligations of the registrant to its clients have been discharged and the surrender of the registration would not be prejudicial to the public interest.

Subsequent
applications

25. A further application for registration may be made upon new or other material or where it is clear that material circumstances have changed.

Application

26. An application for registration shall be made in writing upon a form prescribed by the regulations and provided by the Commission, and shall be accompanied by such fee as may be prescribed by the regulations.

Address
for service

27. Every applicant shall state in the application an address for service in Ontario and, except as otherwise provided in this Act, all notices under this Act or the regulations are sufficiently served for all purposes if delivered or sent by prepaid mail to the latest address for service so stated.

Further
information

28. The Director may require any further information or material to be submitted by an applicant or a registrant within a specified time and may require verification by affidavit or otherwise of any information or material then or previously submitted or may require the applicant or the registrant or any partner, officer, director, governor or trustee of, or any person performing a like function for, or any employee of, the applicant or of the registrant to submit to examination under oath by a person designated by the Director.

Residence

29.—(1) The Director may refuse registration to an individual if he has not been a resident of Canada for at least one year immediately prior to the date of the application for registration and if he is not a resident of Ontario at the date of such application unless at the time of such application such individual is registered in a capacity corresponding to that of a dealer, adviser, partner, officer, salesman or floor trader under the laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is, in the opinion of the Director, otherwise suitable for registration.

Idem

(2) The Director may refuse registration to a person or company if any director or officer of such person or company has not been a resident of Canada for at least one year immediately prior to the date of application for registration

and is not a resident of Ontario at the date of such application unless at the time of such application he is registered in a capacity corresponding to that of dealer, adviser, partner, officer or salesman or floor trader under the laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is, in the opinion of the Director, otherwise suitable for registration.

30.—(1) Every registered dealer shall, within five days of the event, notify the Director in the form prescribed by the regulations of, ^{Notice of changes}

- (a) any change in address for service in Ontario or any business address;
- (b) any change in,
 - (i) the directors or officers of the registered dealer and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefor, and
 - (ii) the holders of the voting securities of the registered dealer;
- (c) the commencement and termination of employment of every salesman and floor trader and in the case of termination of employment, the reason therefor;
- (d) the opening or closing of any branch office in Ontario and, in the case of the opening of any branch office in Ontario, the name and address of the person in charge thereof; and
- (e) any change in the name or address of the person in charge of any branch office in Ontario.

(2) Every registered adviser, shall, within five days of the event, notify the Director in the form prescribed by the regulations of, ^{Idem}

- (a) any change in address for service in Ontario or any business address; and
- (b) any change in,
 - (i) the directors or officers of the registered adviser and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefor, and

- (ii) the holders of the voting securities of the registered adviser.

Idem

(3) Every registered salesman and floor trader shall, within five days of the event, notify the Director in the form prescribed by the regulations of,

- (a) any change in his address for service in Ontario or in his business address; and
- (b) every commencement and termination of his employment by a registered dealer.

Exemptions

(4) The Director may, upon an application of a registrant, exempt, subject to such terms and conditions as he may impose, the registrant from the requirement of subsections 1 and 2 that the Director be notified of any change in the holders of voting securities of the registrant where in his opinion it would not be prejudicial to the public interest to do so.

PART IX

EXEMPTIONS FROM REGISTRATION REQUIREMENTS

Exemptions
of advisers

31. Registration as an adviser is not required to be obtained by,

R.S.C. 1970,
c. B-1

1974-75,
c. 14 (Can.)

R.S.O. 1970,
cc. 254, 224

- (a) a bank to which the *Bank Act* (Canada) applies, or the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada), or a trust company registered under *The Loan and Trust Corporations Act*, or an insurance company licensed under *The Insurance Act*;
- (b) a lawyer, accountant, engineer, teacher or employee of the Ministry of Agriculture and Food;
- (c) a registered dealer, or any partner, officer or employee thereof;
- (d) a person or company registered as an adviser under *The Securities Act, 1977*, or any partner, officer or employee thereof;
- (e) a publisher of or any writer for any *bona fide* newspaper, news magazine or business or financial publication of general and regular paid circulation distributed only to subscribers thereto for value or to purchasers thereof, who gives advice as an adviser

1977, c. ...

only through such publication and has no interest either directly or indirectly in any of the contracts upon which the advice is given and receives no commission or other consideration for giving the advice,

where the performance of the service as an adviser is solely incidental to their principal business or occupation; or

- (f) a person or company registered as a management company under *The Securities Act, 1977*; or 1977, c. ...
- (g) such other persons or companies as are designated by the regulations.

32.—(1) Subject to the regulations, registration is not required in respect of, Exemption of trades

- (a) a trade in a contract which is a *bona fide* hedging transaction;
- (b) a trade in a contract by a person or company acting solely through an agent who is a registered dealer; or
- (c) a trade in a commodity futures option in respect of which a preliminary prospectus and a prospectus have been filed and receipts therefor obtained from the Director under *The Securities Act, 1977*.

PART X

RECOGNITION OF COMMODITY FUTURES EXCHANGES AND ACCEPTANCE OF FORM OF CONTRACT

33. No person or company, except to effect a *bona fide* hedging transaction, shall trade in contracts on his own account or on behalf of any other person or company except those, Registration or recognition of commodity futures exchange and acceptance of form of contracts required

- (a) traded on a commodity futures exchange, registered by the Commission or recognized by the Commission under this Part; and
- (b) the form of which has been accepted by the Director under this Part; or
- (c) commodity futures options for which a preliminary prospectus and a prospectus has been filed and receipts therefor obtained from the Director under *The Securities Act, 1977*.

Recognition
of commodity
futures
exchange by
Commission

34.—(1) Upon application by or on behalf of a commodity futures exchange that is situate outside Ontario, the Commission shall recognize such commodity futures exchange where it is satisfied that to do so would not be prejudicial to the public interest and that,

- (a) the exchange or its clearing house guarantee that all obligations, including those to customers of defaulting members, arising out of contracts entered into on such commodity futures exchange will be met;
- (b) the clearing arrangements made and the financial condition of the commodity futures exchange and its clearing house are such as to ensure that the guarantee referred to in clause *a* can be honoured;
- (c) the rules and regulations applicable to exchange members and clearing house members are in the public interest and are actively enforced;
- (d) floor trading practices are fair and properly supervised;
- (e) adequate measures have been taken to prevent manipulation and excessive speculation;
- (f) adequate provision has been made to record and publish details of trading including volume and open interest;
- (g) the exchange and its clearing house have undertaken to comply with section 35; and
- (h) the exchange and its clearing house are subject to regulation by the Government of Canada, any other province of Canada, the United Kingdom or the United States of America, or any agency thereof.

Hearing

(2) The Commission shall not refuse to recognize a commodity futures exchange under this Part without giving the applicant an opportunity to be heard.

Filing of
by-laws, etc.

35. Every commodity futures exchange recognized by the Commission under section 34 and its clearing house shall file with the Commission all by-laws, rules, regulations and policies as soon as practicable and in any event within ten days of the date on which the by-law, rule, regulation or policy is approved by the Board of Directors of the commodity futures exchange or clearing house and prior to approval by

the membership of the commodity futures exchange or clearing house.

36.—(1) Upon application by or on behalf of a commodity futures exchange registered by the Commission, or recognized by the Commission under this Part, and the filing of a copy of all terms and conditions of a contract that it is proposed be traded in Ontario, the Director shall accept the form of contract where he is satisfied that to do so would not be prejudicial to the public interest and that,

Acceptance
of form of
contracts by
Director

- (a) more than occasional use is made or can be reasonably expected to be made of the contract for *bona fide* hedging transactions;
- (b) with respect to a commodity futures contract each term or condition is in conformity with normal commercial practices of the trade in the commodity or if not in such conformity there is reasonable justification therefor;
- (c) with respect to a commodity futures contract satisfactory levels of margin, daily price limits, daily trading limits and position limits are imposed by the commodity futures exchange;
- (d) with respect to a commodity futures option the form of the commodity futures contract that is the subject of the option has been accepted under this Part; and
- (e) with respect to a commodity futures option,
 - (i) performance on exercise of the option is guaranteed by the commodity futures exchange or clearing house,
 - (ii) the premium is held in trust for the option grantor by the commodity futures exchange or clearing house until exercise or expiration of the option or default of the option grantor, and
 - (iii) during the term of the option margin is required by the commodity futures exchange or clearing house from the option grantor as if he had entered into the commodity futures contract which is the subject of the option.

(2) The Director shall not refuse to accept the form of contract without giving the applicant an opportunity to be heard.

Hearing

Terms and
conditions of
contracts to
be available
through
agent

37.—(1) It is a condition of the acceptance of the form of a contract under section 36 that the commodity futures exchange file with the Commission and, through an agent in Ontario designated by the commodity futures exchange, make available to registrants copies of all current contract terms and conditions.

Idem

(2) Copies of amendments or additions to contract terms and conditions shall be filed with the Commission and supplied to the agent designated by the commodity futures exchange as soon as practicable and in any event within ten days of the date on which the amendment or addition is approved by the Board of Directors of the commodity futures exchange.

Idem

(3) The Director shall not accept the form of a contract until advised by the commodity futures exchange of the name and address of the agent designated for the purposes of subsection 1.

Idem

(4) The commodity futures exchange shall, within five days of the event, notify the Director of any change in the name or address of the agent designated for the purposes of subsection 1.

Order fixing
minimum
levels of
margin,
daily trading
limits or
position
limits

38. The Commission, where in its opinion such action is in the public interest, may by order, fix minimum levels of margin, daily trading limits or position limits applicable to commodity futures contracts traded on commodity futures exchanges recognized under section 34.

Order
exempting
from
registration
for trading,
acceptance
of form of
contract

39.—(1) The Commission may upon the application of an interested person or company, rule that an intended trade is not subject to section 22 or 33 where it is satisfied to do so will not be prejudicial to the public interest and may impose such terms and conditions as are considered necessary.

Ruling
final

(2) A decision of the Commission under this section is final and there is no appeal therefrom.

PART XI

REVOCATION OF REGISTRATION OR RECOGNITION OF COMMODITY FUTURES EXCHANGES AND ACCEPTANCE OF FORM OF CONTRACT

Order
revoking
registration
or recognition
of commodity
futures
exchange
such terms
and conditions
as it may
impose, by
order
of form of
contract

40.—(1) The Commission may, where in its opinion such action is in the public interest, and, subject to such terms and conditions as it may impose, by order

revoke registration of a commodity futures exchange under Part VII or recognition of a commodity futures exchange under Part X or revoke acceptance of the form of a contract under Part X for such period as is specified in the order.

(2) No order shall be made under subsection 1 without a hearing unless in the opinion of the Commission the length of time required for a hearing could be prejudicial to the public interest, in which event the Commission may make a temporary order, that shall not be for longer than fifteen days from the date of the making thereof, but such order may be extended for such period as the Commission considers necessary where satisfactory information is not provided to the Commission within the fifteen day period.

Temporary
order

PART XII

TRADING GENERALLY

41.—(1) Every registered dealer or adviser shall furnish each prospective customer prior to the opening of his account with a written statement in the form prescribed under the regulations which will,

Statement
to be
furnished to
prospective
customer

- (a) explain the nature of, and risks inherent in trading in contracts and obligations assumed by the customer upon entering a contract;
- (b) advise the client to request and study the terms and conditions of the contract; and
- (c) furnish details concerning commissions and other charges levied by the dealer or adviser.

(2) Every registered dealer or adviser upon the request of a client shall furnish the client with a copy of all current terms and conditions of any contract the form of which has been accepted by the Director under Part X.

Terms and
conditions

42.—(1) Subject to subsections 2 and 3, every registered dealer who acts as an agent in connection with a trade in a commodity futures contract shall require from the customer a margin of not less than the minimum prescribed under the rules or regulations of the commodity futures exchange upon which the contract is traded.

Minimum
margin
required

(2) Subject to subsection 3, where the Commission has made an order with respect to levels of margin under

Idem

section 20 or 38, every registered dealer who acts as an agent in connection with a trade in a commodity futures contract shall require from the customer a margin of not less than the minimum prescribed thereunder.

Margin
greater than
minimum

(3) Notwithstanding subsections 1 and 2, a registered dealer may require from the customer a margin greater than that prescribed under subsection 2 or 3.

Confirmation
of trade re
commodity
futures
contract

43.—(1) Every registered dealer who has acted as an agent in connection with any trade in a commodity futures contract, including a trade upon the exercise of a commodity futures option, shall, promptly send by prepaid mail or deliver to the customer a written confirmation of the transaction, setting forth,

- (a) the date of the transaction;
- (b) the commodity and quantity bought or sold;
- (c) the commodity futures exchange upon which the contract was traded;
- (d) the delivery month and year;
- (e) the price at which the contract was entered into;
- (f) the name of the person or company from or to or through whom the commodity was bought or sold;
- (g) the name of the salesman, if any, in the transaction; and
- (h) a clear statement with respect to the obligation of the customer to meet margin calls and the consequence of an account being undermargined.

Coded
identification

(2) For the purposes of clauses *f* and *g* of subsection 1, a person or company or a salesman may be identified in a written confirmation by means of a code or symbols if the written confirmation also contains a statement that the name of the person, company or salesman will be furnished to the customer on request.

Filing
of code

(3) Where a person or company uses a code or symbols for identification in a confirmation under subsection 1, the person or company shall forthwith file the code or symbols and their meaning, and shall notify the Commission within five days of any change in or addition to the code or symbols or their meaning.

(4) Every dealer who has acted as agent in connection with any trade in a commodity futures contract shall promptly disclose to the Commission, upon request by the Commission, the name of the person or company from or to or through whom the commodity was bought or sold. ^{Disclosure of clients}

44. Every registered dealer who has acted as an agent in connection with a liquidating trade in a commodity futures contract shall, on the same day, send by prepaid mail or deliver to the customer in addition to the written confirmation required under section 43, a statement of purchase and sale setting forth, ^{Statement of purchase and sale}

- (a) the dates of the initial transaction and liquidating transaction;
- (b) the commodity and quantity bought and sold;
- (c) the commodity futures exchange upon which the contracts were traded;
- (d) the delivery month and year;
- (e) the prices on the initial transaction and on the liquidating transaction;
- (f) the gross profit or loss on the transactions;
- (g) the Commission; and
- (h) the net profit or loss on the transaction.

45. So long as any unexpired and unexercised commodity futures option or open commodity futures contract is outstanding in a customer's account, every registered dealer shall promptly send by prepaid mail or deliver to each customer a written statement prepared as of the last business day of each month, setting forth, ^{Monthly statement}

- (a) the opening cash balance for the month in the customer's account;
- (b) all deposits, credits, withdrawals and debits to the customer's account;
- (c) the cash balance in the customer's account as of the last business day of the month;
- (d) each unexpired and unexercised commodity futures option as of the last business day of the month;

- (e) the striking price of each unexpired and unexercised commodity futures option;
- (f) the settlement price as of the last business day of the month of the commodity futures contract that is the subject of each unexpired and unexercised commodity futures option;
- (g) each open commodity futures contract as of the last business day of the month;
- (h) the price at which each open commodity futures contract was entered into;
- (i) the settlement price as of the last business day of the month of each open commodity futures contract;
- (j) the amount that the equity in the account has increased or decreased as a result of the difference between the sums called for under clauses *h* and *i*; and
- (k) the total of the sums called for under clauses *c* and *j*.

Confirmation
of trade re
commodity
futures
option

46.—(1) Every registered dealer who has acted as an agent in connection with any trade in a commodity futures option shall, the same day, send by prepaid mail or deliver to the customer a written confirmation of the transaction setting forth,

- (a) the date of the transaction;
- (b) the type and number of commodity futures options;
- (c) the commodity futures exchange upon which the contract was traded;
- (d) the premium;
- (e) the commodity futures contract that is the subject of the commodity futures option;
- (f) the delivery month and year of the commodity futures contract that is the subject of the commodity futures option;
- (g) the declaration date;

- (*h*) the striking price;
- (*i*) the name of the person or company from or through whom the commodity futures option was obtained;
- (*j*) the commission, if any, charged in respect of the trade; and
- (*k*) the name of the salesman, if any, in the transaction.

(2) For the purposes of clauses *i* and *k* of subsection 1, a person or company or a salesman may be identified in a written confirmation by means of a code or symbols if the written confirmation also contains a statement that the name of the person, company or salesman will be furnished to the customer on request. Coded identification

(3) Where a person or company uses a code or symbols for identification in a confirmation under subsection 1, the person or company shall forthwith file the code or symbols and their meaning, and shall notify the Commission within five days of any change in or addition to the code or symbols or their meaning. Filing of code

(4) Every dealer who has acted as agent in connection with any trade in a commodity futures option shall promptly disclose to the Commission, upon request by the Commission, the name of the person or company from or through whom the commodity futures option was obtained. Disclosure by agent

47.—(1) All money, securities and property received by a registered dealer to margin, guarantee or secure the trades or contracts of customers and all funds accruing to customers constitute a trust fund in his hands for the benefit of the customers for whom they are held, and the registered dealer is the trustee of all such money, securities, properties and funds so received by him for which he shall separately account and shall not commingle with his funds nor use to margin, guarantee or secure the trades or contracts or to secure or extend the credit of any customer other than the customer for whom such money, securities, property or funds are held. Trust fund

(2) Notwithstanding subsection 1, the registered dealer may have a residual financial interest in the trust fund and, from time to time, may advance to the trust from his own funds sufficient funds to prevent any and all customers' accounts from becoming undermargined. Idem

Idem

(3) Notwithstanding subsection 1, where a registered dealer has a residual financial interest in the trust fund or has advanced his own funds to the trust to prevent any customer's account from becoming undermargined, his drawing upon the fund to his own order to the extent of his residual financial interest therein or to the extent of the actual advances made, shall be deemed not to be an appropriation or conversion thereof to his own use or to any use not authorized by the trust.

Reports

48. Every registered dealer shall deliver to the Commission, at such time or times as the Commission may require, reports as to transactions in contracts on its own account or on behalf of any other person or company in such form as the Commission may prescribe.

Order prohibiting calls to residences

49.—(1) The Director may, by order, suspend, cancel, restrict or impose terms and conditions upon the right of any person or company named in the order to,

(a) call at any residence; or

(b) telephone from within Ontario to any residence within or outside Ontario,

for the purpose of trading in any contract.

Hearing

(2) The Director shall not make an order under subsection 1 without giving the person or company affected an opportunity to be heard.

"residence" defined

(3) In this section, "residence" includes any building or part of a building in which the occupant resides either permanently or temporarily and any premises appurtenant thereto.

What constitutes calls

(4) For the purposes of this section, a person or company shall be deemed conclusively to have called or telephoned where an officer, director or salesman of the person or company calls or telephones on his or its behalf.

Representations prohibited

50.—(1) No person or company, with the intention of effecting a trade in a contract, shall make any representation that he or any other person or company,

(a) will refund all or any of the margin or premium; or

(b) assume all or any part of the obligation of another person or company under the contract.

(2) No person or company, with the intention of effecting a trade in a contract, shall give any undertaking, written or oral, relating to the future value of such contract. Future value

51. No registrant shall use the name of another registrant on letterheads, forms, advertisements or signs, as correspondent or otherwise, unless he is a partner, officer or agent of or is authorized so to do in writing by the other registrant. Use of name of another registrant

52. No person or company shall hold himself out as being registered by having printed in a circular, pamphlet, advertisement, letter, telegram or other stationery that he is registered. Registration not to be advertised

53. No person or company who is not registered shall, either directly or indirectly, hold himself out as being registered. Holding out by unregistered person

54. No person or company shall make any representation, written or oral, that the Commission has in any way passed upon the financial standing, fitness or conduct of any registrant or upon the merits of any contract. Advertising approval by Commission

55. Every registered dealer or adviser who recommends a trade in a commodity futures contract in any circular, pamphlet, advertisement, letter, telegram or other publication issued, published or sent by it shall state in type not less legible than that used in the body of the publication whether it has a financial interest, direct or indirect, in the class of commodity futures contract recommended and whether its position is net short or net long. Disclosure of financial interest of dealers and advisers

56.—(1) The Commission may, after giving the registered dealer an opportunity to be heard, and upon being satisfied that the registered dealer's past conduct with respect to the use of advertising and sales literature affords reasonable grounds for belief that it is necessary for the protection of the public to do so, order that a registered dealer shall deliver to the Commission at least seven days before it is used, copies of all advertising and sales literature that the registered dealer proposes to use in connection with trading in contracts. Submission of advertising

(2) For the purposes of this section, Interpretation

- (a) "advertising" includes television and radio commercials, newspaper and magazine advertisements and all other sales material generally disseminated through the communications media; and

- (b) "sales literature" includes records, videotapes and similar material, written matter and all other material, except terms and conditions of contracts and the written statement required under section 41, designed for use in a presentation to a customer or prospective customer, whether such material is given or shown to him.

Prohibition
of
advertising

(3) Where the Commission has issued an order under subsection 1, the Director may prohibit the use of the advertising and sales literature so delivered or may require that deletions or changes be made prior to its use.

Rescission
or variation
of order

(4) Where an order has been made under subsection 1, the Commission, on application of the registered dealer at any time after the date thereof, may rescind or vary the order where in its opinion it is not contrary to the public interest to do so.

PART XIII

ENFORCEMENT

Offences,
general

57.—(1) Every person or company that,

- (a) makes a statement in any material, evidence or information submitted or given under this Act or the regulations to the Commission, its representative, the Director or to any person appointed to make an investigation or audit under this Act that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;
- (b) makes a statement in any application, release, report, return, financial statement, or other document required to be filed or furnished under this Act or the regulations that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;
- (c) otherwise contravenes this Act or the regulations; or
- (d) fails to observe or to comply with any direction, decision, ruling, order or other requirement made under this Act or the regulations,

is guilty of an offence and on summary conviction is liable, in the case of a company or a person other than an individual, to a fine of not more than \$25,000 and,

in the case of an individual, to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

(2) No person or company is guilty of an offence under clause *a* or *b* of subsection 1 if he or it, as the case may be, did not know and in the exercise of reasonable diligence could not have known that the statement was a misrepresentation. Defence

(3) Where a company or a person other than an individual is guilty of an offence under subsection 1, every director or officer of such company or person who authorized, permitted, or acquiesced in such offence is also guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000, or to imprisonment for a term of not more than one year. Directors and officers

58. No proceedings under section 57 shall be instituted except with the consent or under the direction of the Minister. Consent of Minister

59. An information in respect of any contravention of this Act may be for one or more offences, and no information, summons, warrant, conviction or other proceeding in any such prosecution is objectionable or insufficient by reason of the fact that it relates to two or more offences. Information containing more than one offence

60.—(1) Where a provincial judge, magistrate or justice of another province or territory of Canada issues a warrant for the arrest of any person on a charge of contravening any provision of a statute of such province or territory similar to this Act, any provincial judge or justice of Ontario within whose jurisdiction that person is or is suspected to be, may, upon satisfactory proof of the handwriting of the provincial judge, magistrate or a justice who issued the warrant, make an endorsement thereon in the form prescribed by the regulations, and a warrant so endorsed is sufficient authority to the person bringing the warrant and to all other persons to whom it was originally directed and to all constables within the territorial jurisdiction of the provincial judge or justice so endorsing the warrant to execute it within that jurisdiction and to take the person arrested thereunder either out of or anywhere in Ontario and to rearrest such person anywhere in Ontario. Execution of warrant issued in another province

(2) Any constable of Ontario or of any other province or territory of Canada who is passing through Ontario having in his custody a person arrested in another province Prisoner in transit

or territory under a warrant endorsed under subsection 1 is entitled to hold, take and rearrest the accused anywhere in Ontario under such warrant without proof of the warrant or the endorsement thereof.

Order for
compliance

61.—(1) Where it appears to the Commission that any person or company has failed to comply with or is violating any decision or any provision of this Act or the regulations, the Commission may, notwithstanding the imposition of any penalty in respect of such non-compliance or violation and in addition to any other rights it may have, apply to a judge of the High Court designated by the Chief Justice of the High Court for an order,

- (a) directing such person or company to comply with such decision or provision or restraining such person or company from violating such decision or provision; and
- (b) directing the directors and senior officers of such person or company to cause such person or company to comply with or to cease violating any such decision or provision,

and, upon the application, the judge may make such order or such other order as he thinks fit.

Appeal

(2) An appeal lies to the Supreme Court from an order made under subsection 1.

Limitation
period

62.—(1) No proceedings under this Part shall be commenced in a court more than one year after the facts upon which the proceedings are based first came to the knowledge of the Commission.

Idem

(2) No proceedings under this Act shall be commenced before the Commission more than two years after the facts upon which the proceedings are based first came to the knowledge of the Commission.

PART XIV

GENERAL PROVISIONS

Refunds

63. Where,

- (a) an application for registration or renewal of registration is abandoned;
- (b) an application for recognition of a commodity futures exchange is abandoned; or

- (c) an application for acceptance of the form of contract is abandoned,

the Director may, upon the application of the person or company who made the application recommend to the Treasurer of Ontario that a refund of the fee paid on the making of the application or such part thereof as he considers fair and reasonable be made, and the Treasurer may make such refund from the Consolidated Revenue Fund.

64. A statement as to,

Admissibility
in evidence
of certified
statements

- (a) the registration or non-registration of any person or company;
- (b) the filing or non-filing of any document or material required or permitted to be filed;
- (c) any other matter pertaining to such registration, non-registration, filing or non-filing, or to any such person, company, document or material; or
- (d) the date of the facts upon which any proceedings are to be based first came to the knowledge of the Commission,

purporting to be certified by the Commission or a member thereof, or by the Director is, without proof of the office or signature of the person certifying, admissible in evidence, so far as relevant, for all purposes in any action, proceeding or prosecution.

65. The Commission shall make all material filed under this Act or the regulations available for public inspection during its normal business hours.

Material
available for
inspection

66.—(1) No action or other proceeding for damages shall be instituted against the Commission or any member thereof, or any officer, servant or agent of the Commission for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act or a regulation, or for any neglect or default in the performance or exercise in good faith of such duty or power.

Immunity of
Commission
and officers

(2) No person or company has any rights or remedies and no proceedings lie or shall be brought against any person or company for any act or omission done or omitted in compliance or intended compliance with any requirement,

Immunity re
intended
compliance

order or direction made or given under this Act or the regulations.

Regulations **67.** The Lieutenant Governor in Council may make regulations,

1. prescribing requirements respecting applications for registration and renewal of registration, and providing for the expiration of registrations;
2. classifying registrants into categories and prescribing the terms and conditions of registration of registrants in each category;
3. governing the furnishing of information to the public or to the Commission by a registrant in connection with contracts or trades therein;
4. designating any person or company or any class of persons or companies that shall not be required to obtain registration as an adviser;
5. designating any goods, article, service, right or interest, or class thereof, a commodity;
6. prescribing conditions for the conduct of the business of a commodity futures exchange;
7. prescribing conditions precedent to the recognition of self-regulatory bodies under section 15;
8. prescribing the fees payable to the Commission including fees for filing, fees upon applications for registration, fees in respect of audits made by the Commission and other fees in connection with the administration of this Act and the regulations;
9. prescribing the documents, certificates, reports, releases, statements, agreements and other particulars relating thereto that are required to be filed, furnished or delivered under this Act and the regulations;
10. prescribing the practice and procedure of investigations under sections 7 and 9;
11. prescribing the forms for use under this Act and the regulations;
12. respecting the content and distribution of written,

printed or visual material and advertising that may be distributed or used by a person or company in respect of a contract ;

13. prescribing the form and content of the written statement required by section 41 ;
14. respecting terms of the trust imposed under section 47 ;
15. permitting the Commission or the Director to exempt any person or company from the provisions of the regulations or vary the provisions as they apply to any person or company.

68. The Commission may, where in its opinion to do so would not be prejudicial to the public interest, make an order on such terms and conditions as it may impose revoking or varying any decisions made by it under this Act or the regulations. Commission's discretion to revoke or vary its decision

69. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

70. This Act may be cited as *The Commodity Futures Act, 1977*. Short title

An Act to regulate Trading
in Commodity Futures Contracts

1st Reading

April 5th, 1977

2nd Reading

3rd Reading

THE HON. S. B. HANDLEMAN
Minister of Consumer and
Commercial Relations

(Government Bill)

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publications

The Securities Act, 1977



THE HON. S. B. HANDLEMAN
Minister of Consumer and Commercial Relations

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EXPLANATORY NOTE

The Bill is a revision of *The Securities Act*.

The purpose of the revision is to:

- (a) implement the recommendations of The Report of The Canadian Committee on Mutual Funds and Investment Contracts;
- (b) establish a system providing continuous material information on the affairs of reporting issuers which, in turn, permits a more exhaustive and objective definition of when securities may be traded without restriction;
- (c) withdraw the exemption for take-overs by private agreement and those to be effected in the over-the-counter market while continuing the exemptions for take-overs through the facilities of a recognized stock exchange and bids for the shares of private companies;
- (d) require, where an issuer makes an offer to purchase its own securities, disclosure similar to that called for on take-over bids;
- (e) expand insider liability from insiders and their associates to include "tippees", i.e., anyone trading securities with knowledge of a material fact or change in respect of the issuer that has not been generally disclosed, to make the information, or "tipping", of another person or company of that material fact or change an offence and by parallel amendment remove insider reporting and liability from *The Business Corporations Act*;
- (f) require financial institutions, i.e., banks, loan and trust companies and insurance companies to obtain registration where, as either principal or agent, they trade in securities with the public while continuing the exemption from registration as dealer where banks and trust companies transmit unsolicited orders for execution through a registrant and the exemption of banks from registration as underwriter with respect to government and municipal securities;
- (g) require that financial institutions be subject to the continuous disclosure and insider reporting provisions of the legislation;
- (h) remove matters such as proxy solicitation generally regarded as corporate law from *The Securities Act* and, at the same time, by parallel amendments to *The Business Corporations Act* consolidate investor disclosure in *The Securities Act*;
- (i) amend some existing provisions of securities legislation in an effort to effectively achieve their purpose; and
- (j) reorganize *The Securities Act* into a more logical format leaving fundamental principles in the Act and the detailed implementation to the regulation making powers.

The Securities Act, 1977

HER MAJESTY, by and with advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

INTERPRETATION

1.—(1) In this Act,

Interpre-
tation

1. “adviser” means a person or company engaging in or holding himself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of securities;
2. “associate”, where used to indicate a relationship with any person or company means,
 - i. any company of which such person or company beneficially owns, directly or indirectly, voting securities carrying more than 10 per cent of the voting rights attached to all voting securities of the company for the time being outstanding,
 - ii. any partners of that person or company,
 - iii. any trust or estate in which such person or company has a substantial beneficial interest or as to which such person or company serves as trustee or in a similar capacity,
 - iv. any relative of such person, including his spouse, or of his spouse who has the same home as such person;
3. “Commission” means the Ontario Securities Commission;
4. “company” means any corporation, incorporated association, incorporated syndicate or other incorporated organization;

5. "contract" includes a trust agreement, declaration of trust or other similar instrument;
6. "contractual plan" means any contract or other arrangement for the purchase of shares or units of a mutual fund by payments over a specified period or by a specified number of payments where the amount deducted from any one of the payments as sales charges is larger than the amount that would have been deducted from such payment for sales charges if deductions had been made from each payment at a constant rate for the duration of the plan;
7. "contractual plan service company" means a person or company that sponsors or administers a contractual plan other than a trust company registered under *The Loan and Trust Corporations Act*;
8. "dealer" means a person or company who trades in securities in the capacity of principal or agent;
9. "decision" means a direction, decision, order, ruling or other requirement made under a power or right conferred by this Act or the regulations;
10. "Director" means the Director or any Deputy Director of the Commission;
11. "director", where used in relation to a person, includes a person acting in a capacity similar to that of a director of a company;
12. "distribution", where used in relation to trading in securities, means,
 - i. a trade in securities of an issuer that have not been previously issued,
 - ii. a trade by or on behalf of an issuer in previously issued securities of that issuer that have been redeemed or purchased by or donated to that issuer,
 - iii. a trade in previously issued securities of an issuer from the holdings of any person, company or combination of persons or companies holding a sufficient number of any securities of that issuer to affect materially the control of that issuer, but any holding of any person, company or combination of persons and companies holding more than 20 per cent of the outstanding voting securities of an issuer

shall, in the absence of evidence to the contrary, be deemed to affect materially the control of that issuer,

- iv. a trade in securities previously issued through an exemption in subsection 1 of section 73 that is not made in compliance with subsection 4, 5, 6 or 7 of section 73,
- v. the first trade in previously issued securities of a company that has ceased to be a private company,

and “distribute”, “distributed” and “distributing” have a corresponding meaning;

- 13. “distribution company” means a person or company distributing securities under a distribution contract;
- 14. “distribution contract” means a contract between a mutual fund or its trustees or other legal representative and a person or company under which that person or company is granted the right to purchase the shares or units of the mutual fund for distribution or to distribute the shares or units of the mutual fund on behalf of the mutual fund;
- 15. “file” means deliver to the Commission;
- 16. “form of proxy” means a written or printed form that, upon completion and execution by or on behalf of a security holder, becomes a proxy;
- 17. “individual” means a natural person, but does not include a partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, or a natural person in his capacity as trustee, executor, administrator or other legal personal representative;
- 18. “insider” or “insider of a reporting issuer” means,
 - i. every director or senior officer of a reporting issuer,
 - ii. every director or senior officer of a company that is itself an insider or subsidiary of a reporting issuer,
 - iii. any person or company who beneficially owns, directly or indirectly, voting securities of a reporting issuer or who exercises control or direction over voting securities of a reporting

issuer or a combination of both carrying more than 10 per cent of the voting rights attached to all voting securities of the reporting issuer for the time being outstanding other than voting securities held by the person or company as underwriter in the course of a distribution, and

- iv. a reporting issuer where it has purchased, redeemed or otherwise acquired any of its securities, for so long as it holds any of its securities;
- 19. "issuer" means a person or company who has outstanding, issues or proposes to issue, a security;
- 20. "management company" means a person or company who provides investment advice, under a management contract;
- 21. "management contract" means a contract under which a mutual fund is provided with investment advice, alone or together with administrative or management services, for valuable consideration;
- 22. "material", where used in relation to a fact or change, means a fact or change that would reasonably be expected to have a significant effect on the market price of a security of an issuer;
- 23. "Minister" means the Minister of Consumer and Commercial Relations or other member of the Executive Council to whom the administration of this Act may be assigned;
- 24. "misrepresentation" means,
 - i. an untrue statement of material fact, or
 - ii. an omission to state a material fact;
- 25. "mutual fund" includes an issuer of securities that entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets, including a separate fund or trust account, of the issuer of the securities;
- 26. "officer" means the chairman, any vice-chairman of the board of directors, the president, any vice-president, the secretary, the assistant secretary, the treasurer, the assistant treasurer, and the general manager of a company, and any other person

designated an officer of a company by by-law or similar authority, or any individual acting in a similar capacity on behalf of an issuer or registrant;

27. "person" means an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator, or other legal representative;
28. "portfolio manager" means an adviser registered for the purpose of managing the investment portfolio of clients through discretionary authority granted by the clients;
29. "portfolio securities", where used in relation to a mutual fund, means securities traded within the last thirty days, held, or proposed to be purchased by the mutual fund;
30. "private company" means a company in whose constating document,
 - i. the right to transfer its shares is restricted,
 - ii. the number of its shareholders, exclusive of persons who are in its employment and exclusive of persons who, having been formerly in the employment of the company, were, while in that employment, and have continued after termination of that employment to be, shareholders of the company, is limited to not more than fifty, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder, and
 - iii. any invitation to the public to subscribe for its securities is prohibited;
31. "promoter" means,
 - i. a person or company who, acting alone or in conjunction with one or more other persons, companies or a combination thereof, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of an issuer, or
 - ii. a person or company who, in connection with the founding, organizing or substantial reorganizing of the business of an issuer, directly or indirectly, receives in consideration of services or property, or both services and property, 10 per cent or more of any class of

securities of the issuer or 10 per cent or more of the proceeds from the sale of any class of securities of a particular issue, but a person or company who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this definition if such person or company does not otherwise take part in founding, organizing, or substantially re-organizing the business;

32. "proxy" means a completed and executed form of proxy by means of which a security holder has appointed a person or company as his nominee to attend and act for him and on his behalf at a meeting of security holders;
33. "register" means register under this Act, and "registered" has a corresponding meaning;
34. "registrant" means a person or company registered or required to be registered under this Act;
35. "regulations" means the regulations made under this Act;
36. "reporting issuer" means an issuer,
 - i. that has issued voting securities on or after the 1st day of May, 1967 in respect of which a prospectus was filed and a receipt therefor obtained under a predecessor of this Act or in respect of which a securities exchange take-over bid circular was filed under a predecessor of this Act,
 - ii. that has filed a prospectus and obtained a receipt therefor under this Act or that has filed a securities exchange take-over bid circular under this Act,
 - iii. any of whose securities have been at any time since the coming into force of this Act listed and posted for trading on any stock exchange in Ontario recognized by the Commission, regardless of when such listing and posting for trading commenced,
 - iv. to which *The Business Corporations Act* applies and which, for the purposes of that Act, is offering its securities to the public, or
 - v. that is the company whose existence continues following the exchange of securities of a com-

pany by or for the account of such company with another company or the holders of the securities of that other company in connection with,

- (a) a statutory amalgamation or arrangement; or
- (b) a statutory procedure under which one company takes title to the assets of the other company that in turn loses its existence by operation of law, or under which the existing companies merge into a new company,

where one of the amalgamating or merged companies or the continuing company has been a reporting issuer for at least twelve months;

37. "salesman" means an individual who is employed by a dealer for the purpose of making trades in securities on behalf of the dealer;

38. "security" includes,

- i. any document, instrument or writing commonly known as a security,
- ii. any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company,
- iii. any document constituting evidence of an interest in an association of legatees or heirs,
- iv. any document constituting evidence of an option, subscription or other interest in or to a security,
- v. any bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of share or interest, pre-organization certificate, subscription or any agreement under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets,

- vi. any agreement providing that money received will be repaid or treated as a subscription to shares, stock, units or interests at the option of the recipient or of any person or company,
- vii. any certificate of share or interest in a trust, estate or association,
- viii. any profit-sharing agreement or certificate,
- ix. any certificate or interest in an oil, natural gas or mining lease, claim or royalty voting trust certificate,
- x. any oil or natural gas royalties or leases or fractional or other interest therein,
- xi. any collateral trust certificate,
- xii. any income or annuity contract not issued by an insurance company or an issuer within the meaning of *The Investment Contracts Act*,
- xiii. any investment contract, other than an investment contract within the meaning of *The Investment Contracts Act*,
- xiv. any document constituting evidence of an interest in a scholarship or educational plan or trust,
- xv. any document constituting evidence of an agreement purporting to grant an exclusive right to use or occupy any part of specific real property for residential, recreational or vacation purposes for a specific time or times within any specific period of time where the agreement contemplates the grant of the same or similar rights to other persons or companies on a time sharing basis with respect to the specific real property,
- xvi. any commodity futures option within the meaning of *The Commodity Futures Act, 1977* except where such commodity futures option is traded on a commodity futures exchange registered or recognized by the Commission under *The Commodity Futures Act, 1977*, and

R.S.O. 1970,
c. 226

1977, c. . . .

- xvii. any commodity futures contract other than a commodity futures contract within the meaning of *The Commodity Futures Act*,^{1977, c. . . .} 1977,

whether any of the foregoing relate to an issuer or proposed issuer;

39. “senior officer” means,

- i. the chairman or a vice-chairman of the board of directors, the president, a vice-president, the secretary, the treasurer or the general manager of a company or any other individual who performs functions for an issuer similar to those normally performed by an individual occupying any such office, and
- ii. each of the five highest paid employees of an issuer, including any individual referred to in subparagraph i;

40. “trade” or “trading” includes,

- i. any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security,
- ii. any participation as a floor trader in any transaction in a security upon the floor of any stock exchange,
- iii. any receipt by a registrant of an order to buy or sell a security,
- iv. any transfer, pledge or encumbrancing of securities of an issuer from the holdings of any person or company or combination of persons or companies described in subparagraph iii of paragraph 12 for the purpose of giving collateral for a *bona fide* debt, and
- v. any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing;

41. “underwriter” means a person or company who, as principal, agrees to purchase securities with a view to distribution or who, as agent, offers for sale or sells securities in connection with a distribution and

includes a person or company who has a direct or indirect participation in any such distribution, but does not include,

- i. a person or company whose interest in the transaction is limited to receiving the usual and customary distributor's or seller's commission payable by an underwriter or issuer,
- ii. a mutual fund that, under the laws of the jurisdiction to which it is subject, accepts its shares or units for surrender and resells them,
- iii. a company that, under the laws of the jurisdiction to which it is subject, purchases its shares and resells them, or
- iv. a bank to which the *Bank Act* (Canada) applies with respect to the securities described in paragraph 1 of subsection 2 of section 35;

42. "voting security" means any security other than a debt security of an issuer carrying a voting right either under all circumstances or under some circumstances that have occurred and are continuing.

Affiliated
companies

(2) A company shall be deemed to be an affiliate of another company if one of them is the subsidiary of the other or if both are subsidiaries of the same company or if each of them is controlled by the same person or company.

Controlled
companies

(3) A company shall be deemed to be controlled by another person or company or by two or more companies if,

- (a) voting securities of the first-mentioned company carrying more than 50 per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company or by or for the benefit of the other companies; and
- (b) the votes carried by such securities are entitled, if exercised, to elect a majority of the board of directors of the first-mentioned company.

Subsidiary
companies

(4) A company shall be deemed to be a subsidiary of another company if,

- (a) it is controlled by,
 - (i) that other, or
 - (ii) that other and one or more companies each of which is controlled by that other, or

(iii) two or more companies each of which is controlled by that other; or

(b) it is a subsidiary of a company that is that other's subsidiary.

(5) A person shall be deemed to own beneficially securities ^{Beneficial ownership of securities} beneficially owned by a company controlled by him or by an affiliate of such company.

(6) A company shall be deemed to own beneficially ^{Idem} securities beneficially owned by its affiliates.

(7) Every management company and every distribution company of a mutual fund that is a reporting issuer and every insider of such management company and distribution company shall be deemed to be an insider of the mutual fund. ^{Insider of mutual fund}

(8) Where an issuer becomes an insider of a reporting issuer, every director or senior officer of the issuer shall be deemed to have been an insider of the reporting issuer for the previous six months or for such shorter period that he was a director or senior officer of the issuer. ^{Issuer as insider of reporting issuer}

(9) Where a reporting issuer becomes an insider of any other reporting issuer, every director or senior officer of the second-mentioned reporting issuer shall be deemed to have been an insider of the first-mentioned reporting issuer for the previous six months or for such shorter period that he was a director or senior officer of the second-mentioned reporting issuer. ^{Reporting issuer as insider of other reporting issuer} R.S.O. 1970, c. 426, s. 1, *amended*.

PART I

THE COMMISSION

2.—(1) The Commission is continued and is responsible ^{Commission} for the administration of this Act.

(2) The Commission shall be composed of a Chairman and ^{Appointment} not more than eight other members, appointed by the Lieutenant Governor in Council, one of whom shall be designated as Vice-Chairman.

(3) Two members of the Commission constitute a quorum. ^{Quorum} R.S.O. 1970, c. 426, s. 2, *amended*.

Chairman
and members

3.—(1) The Chairman shall be the chief executive officer of the Commission and shall devote his full time to the work of the Commission, and the other members shall devote such time as may be necessary for the due performance of their duties as members of the Commission.

Delegation
of powers

(2) The Chairman, Vice-Chairman or any member of the Commission may exercise the powers and shall perform such duties vested in or imposed upon the Commission by this Act or the regulations as are assigned to him by the Commission.

Eligibility
to sit on
hearing

(3) Where the person who exercises the powers and performs the duties vested in the Commission by sections 11 to 17 pursuant to an assignment under subsection 2, receives the report of an investigation ordered under section 11 and on the basis of such report issues an *ex parte* order or a direction that proceedings be instituted by the Commission under section 26, 71, 126 or 127 such person shall not sit on the hearing required to be held by the Commission except with the written consent of the party directly affected by the proceedings.

Review

(4) Every decision made pursuant to an assignment under subsection 2 is subject to review by the Commission under section 8 in the same manner as if it had been made by the Director, and the person who made the decision shall not sit on the hearing and review thereof by the Commission. R.S.O. 1970, c. 426, s. 3, *amended*.

PART II

FINANCIAL DISCLOSURE ADVISORY BOARD

Financial
Disclosure
Advisory
Board

4.—(1) The Financial Disclosure Advisory Board established under *The Securities Act*, being chapter 426 of the Revised Statutes of Ontario, 1970, is continued and shall be composed of not more than five members appointed by the Lieutenant Governor in Council, and the Lieutenant Governor in Council may designate one of the members to be chairman.

Meetings

(2) The Financial Disclosure Advisory Board shall meet at the call of the Commission.

(3) The Financial Disclosure Advisory Board shall, when ^{Duties} requested by the Commission, consult with and advise the Commission concerning the financial disclosure requirements of this Act and the regulations.

(4) The members of The Financial Disclosure Advisory Board shall serve without remuneration, but the Lieutenant Governor in Council may fix a *per diem* allowance to be payable to each member, and every member is entitled to his reasonable and necessary expenses, as certified by the chairman, for attending at meetings and transacting the business of the Board. R.S.O. 1970, c. 426, s. 146, *amended*. ^{Remuneration}

PART III

APPOINTMENT OF EXPERTS

5.—(1) The Commission may appoint one or more experts ^{Appointment of experts} to assist the Commission in such manner as it may consider expedient.

(2) The Commission may submit any agreement, prospectus, financial statement, report or other document to one or more experts appointed under subsection 1 for examination, and the Commission has the like power to summon and enforce the attendance of witnesses before the expert and to compel them to produce documents, records and things as is vested in the Commission, and subsections 3 and 4 of section 11 apply *mutatis mutandis*. ^{Submissions to experts}

(3) An expert appointed under subsection 1 shall be paid such amounts for services and expenses as the Lieutenant Governor in Council may determine. *New*. ^{Payment of experts}

PART IV

THE DIRECTOR

6. The Director may exercise the powers and shall perform the duties vested in or imposed upon him by this Act, and he may exercise the powers and shall perform the duties vested in or imposed upon the Commission by this Act or the regulations that are assigned to him by the Commission except those referred to in section 8 and sections 11 to 17 ^{Director}

and, subject to the direction of the Commission, he is the chief administrative officer of the Commission. R.S.O. 1970, c. 426, s. 4.

Refunds

7. Where,

(a) an application for registration or renewal of registration is abandoned; or

(b) a preliminary prospectus or prospectus is withdrawn,

the Director may, upon the application of the person or company who made the application or filed the preliminary prospectus or prospectus, recommend to the Treasurer of Ontario that a refund of the fee paid on the making of the application or the filing of the preliminary prospectus or prospectus or such part thereof as he considers fair and reasonable be made, and the Treasurer may make such refund from the Consolidated Revenue Fund. R.S.O. 1970, c. 426, s. 17.

PART V

ADMINISTRATIVE PROCEEDINGS, REVIEWS AND APPEALS

Notification of decision

8.—(1) The Director shall forthwith notify the Commission of every decision refusing registration under section 25 or refusing to issue a receipt for a prospectus under section 62 and the Commission may within thirty days of the decision notify the Director and any person or company directly affected of its intention to convene a hearing to review the decision. *New.*

Review of Director's decisions

(2) Any person or company directly affected by a decision of the Director may, by notice in writing sent by registered mail to the Commission within thirty days after the mailing of the notice of the decision, request and be entitled to a hearing and review thereof by the Commission.

Power on review

(3) Upon a hearing and review, the Commission may by order confirm the decision under review or make such other decision as the Commission considers proper. R.S.O. 1970, c. 426, s. 28; 1971, c. 31, s. 5.

(4) Notwithstanding that a person or company requests ^{Stay} a hearing and review under subsection 2 of this section or subsection 4 of section 3, the decision under review takes effect immediately, but the Commission may grant a stay until disposition of the hearing and review. 1973, c. 11, s. 1.

9.—(1) Any person or company directly affected by a ^{Appeal} decision of the Commission, other than a decision under section 75, may appeal to the Supreme Court.

(2) Notwithstanding that an appeal is taken under this ^{Stay} section, the decision appealed from takes effect immediately, but the Commission or the Divisional Court may grant a stay until disposition of the appeal.

(3) The Secretary shall certify to the Registrar of the ^{Certification of documents} Supreme Court,

- (a) the decision that has been reviewed by the Commission;
- (b) the decision of the Commission, together with any statement of reasons therefor;
- (c) the record of the proceedings before the Commission; and
- (d) all written submissions to the Commission or other material that is relevant to the appeal.

(4) The Minister is entitled to be heard by counsel or ^{Minister entitled to appear} otherwise upon the argument of an appeal under this section.

(5) Where an appeal is taken under this section, the court ^{Powers of court on appeal} may by its order direct the Commission to make such decision or to do such other act as the Commission is authorized and empowered to do under this Act or the regulations and as the court considers proper, having regard to the material and submissions before it and to this Act and the regulations, and the Commission shall make such decision or do such act accordingly.

(6) Notwithstanding an order of the court, on an appeal, ^{Further decisions} the Commission may make any further decision upon new material or where there is a significant change in the

circumstances, and every such decision is subject to this section. 1973, c. 11, s. 2, *amended*.

Secretary

10.—(1) There shall be a Secretary to the Commission who may,

- (a) accept service of all notices or other documents on behalf of the Commission;
- (b) when authorized by the Commission, sign any decision made by the Commission as a result of a hearing;
- (c) certify under his hand any decision made by the Commission or any document, record or thing used in connection with any hearing by the Commission where certification is required for a purpose other than that stated in subsection 3 of section 9; and
- (d) exercise such other powers as are vested in him by this Act or the regulations and perform such other duties as are imposed upon him by this Act or the regulations or by the Commission.

Acting
Secretary

(2) Where the Secretary is absent for any reason, the Commission may designate another individual to act in the capacity of Secretary and the individual designated may exercise all the powers vested in the Secretary by this Act or the regulations.

Certification
by Secretary

(3) A certificate purporting to be signed by the Secretary is, without proof of the office or signature certifying, admissible in evidence, so far as is relevant, for all purposes in any action, proceeding or prosecution. *New*.

PART VI

INVESTIGATIONS

Investigation
order

11.—(1) Where upon a statement made under oath it appears probable to the Commission that any person or company has,

- (a) contravened any of the provisions of this Act or the regulations; or

- (b) committed an offence under the *Criminal Code* (Canada) in connection with a trade in securities,

the Commission may, by order, appoint any person to make such investigation as it deems expedient for the due administration of this Act, and in the order shall determine and prescribe the scope of the investigation.

(2) The Commission may, by order, appoint any person ^{Investigation order} to make such investigation as it deems expedient for the due administration of this Act or into any matter relating to trading in securities, and in such order shall determine and prescribe the scope of the investigation.

(3) For the purposes of any investigation ordered under ^{Scope of investigation} this section, the person appointed to make the investigation may investigate, inquire into and examine,

- (a) the affairs of the person or company in respect of whom the investigation is being made and any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with the person or company and any property, assets or things owned, acquired or alienated in whole or in part by the person or company or by any person or company acting on behalf of or as agent for the person or company; and
- (b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with the person or company and the relationship that may at any time exist or have existed between the person or company and any other person or company by reason of investments, commissions promised, secured or paid, interests held or acquired, the loaning or borrowing of money, stock or other property, the transfer, negotiation or holding of stock, interlocking directorates, common control, undue influence or control or any other relationship.

(4) The person making an investigation under this section ^{Powers to summon witnesses and require production} has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Supreme Court for the trial of civil actions, and the failure or refusal of a person to attend, to answer

- questions or to produce such documents, records and things as are in his custody or possession makes the person liable to be committed for contempt by a judge of the Supreme Court as if in breach of an order or judgment of the Supreme Court provided that no provision of *The Evidence Act* exempts any bank or any officer or employee thereof from the operation of this section.
- R.S.O. 1970, c. 151
- Counsel (5) A person giving evidence at an investigation under this section may be represented by counsel.
- Seizure of property (6) Where an investigation is ordered under this section, the person appointed to make the investigation may seize and take possession of any documents, records, securities or other property of the person or company whose affairs are being investigated.
- Inspection of seized documents (7) Where any documents, records, securities or other property are seized under subsection 6, the documents, records, securities or other property shall be made available for inspection and copying by the person or company from whom seized at a mutually convenient time and place if a request for an opportunity to inspect or copy is made by the person or company to the person appointed to make the investigation.
- Accountants and experts (8) Where an investigation is ordered under this section, the Commission may appoint an accountant or other expert to examine documents, records, properties and matters of the person or company whose affairs are being investigated. R.S.O. 1970, c. 426, s. 21 (1-8).
- Report of investigation (9) Every person appointed under subsection 1, 2 or 8 shall provide the Commission with a full and complete report of the investigation including any transcript of evidence and material in his possession relating to the investigation. R.S.O. 1970, c. 426, s. 21 (9), *amended*.
- Report to Minister **12.** Where upon the report of an investigation made under section 11 it appears to the Commission that any person or company may have,
- (a) contravened any of the provisions of this Act or the regulations; or
- (b) committed an offence under the *Criminal Code* (Canada) in connection with a transaction relating to securities,
- R.S.C. 1970, c. C-34
- the Commission shall send a full and complete report of the investigation, including the report made to it, any transcript

of evidence and any material in the possession of the Commission relating thereto, to the Minister. R.S.O. 1970, c. 426, s. 22.

13. Notwithstanding section 11, the Minister may, by order, ^{Investigation by order of Minister} appoint any person to make such investigation as the Minister considers expedient for the due administration of this Act or into any matter relating to trading in securities, in which case the person so appointed, for the purposes of the investigation, has the same authority, powers, rights, and privileges as a person appointed under section 11. R.S.O. 1970, c. 426, s. 23.

14. No person, without the consent of the Commission, ^{Evidence not to be disclosed} shall disclose, except to his counsel, any information or evidence obtained or the name of any witness examined or sought to be examined under section 11 or 13.

15. Where an investigation has been made under section 11, the Commission may, and, where an investigation has been made under section 13, the person making the investigation shall report the result thereof, including the evidence, findings, comments and recommendations, to the Minister, and the Minister may cause the report to be published in whole or in part in such manner as he considers proper. R.S.O. 1970, c. 426, s. 25. ^{Report to Minister}

16.—(1) The Commission may,

^{Order to freeze property}

- (a) where it is about to order an investigation in respect of a person or company under section 11 or during or after an investigation in respect of a person or company under section 11 or 13;
- (b) where it is about to make or has made an order under section 126 that trading in securities of an issuer shall cease;
- (c) where it is about to make or has made a decision suspending or cancelling the registration of any person or company or affecting the right of any person or company to trade in securities; or
- (d) where criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any person or company, that in the opinion of the Commission are connected with or arise out of any

security or any trade therein, or out of any business conducted by the person or company,

in writing or by telegram direct any person or company having on deposit or under control or for safekeeping any funds or securities of the person or company referred to in clause *a, b, c* or *d* to hold such funds or securities or direct the person or company referred to in clause *a, b, c* or *d* to refrain from withdrawing any such funds or securities from any other person or company having any of them on deposit, under control or for safekeeping or to hold all funds or securities of clients or others in his possession or control in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the *Bankruptcy Act* (Canada), *The Judicature Act*, *The Corporations Act*, *The Business Corporations Act*, the *Winding-up Act* (Canada) or section 17 of this Act, or until the Commission in writing revokes the direction or consents to release any particular fund or security from the direction, provided that no such direction applies to funds or securities in a stock exchange clearing house or to securities in process of transfer by a transfer agent unless the direction expressly so states, and in the case of a bank, loan or trust company, the direction applies only to the offices, branches or agencies thereof named in the direction.

R.S.C. 1970,
cc. B-3, W-10,
R.S.O. 1970,
cc. 228, 89, 53

Application
for
directions

(2) Any person or company named in a direction issued under subsection 1 may, if in doubt as to the application of the direction to particular funds or securities, apply to the Commission for an order of clarification. R.S.O. 1970, c. 426, s. 26 (1, 2), *amended*.

Revocation
or
amendment
of direction

(3) Upon the application of a person or company directly affected by a direction issued under subsection 1, the Commission may make an order on such terms and conditions it may impose revoking the direction or consenting to the release of any fund or security. *New*.

Notice to
land registry
offices

(4) In any of the circumstances mentioned in clause *a, b, c*, or *d* of subsection 1, the Commission may in writing or by telegram notify any land registrar or mining recorder that proceedings are being or are about to be taken that may affect land or mining claims belonging to the person or company referred to in the notice, which notice shall be registered or recorded against the lands or claims mentioned therein and has the same effect as the registration or recording of a certificate of *lis pendens* or a caution, and the Commission may in writing revoke or modify the notice. R.S.O. 1970, c. 426, s. 26 (3), *amended*.

17.—(1) The Commission may,

Appointment
of receiver,
etc.

- (a) where it is about to order an investigation in respect of a person or company under section 11 or during or after an investigation in respect of a person or company under section 11 or 13;
- (b) where it is about to make or has made an order under section 126 that trading in securities of an issuer shall cease;
- (c) where it is about to make or has made a decision suspending or cancelling the registration of any person or company or affecting the right of any person or company to trade in securities;
- (d) where criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any person or company that in the opinion of the Commission are connected with or arise out of any security or any trade therein, or out of any business conducted by the person or company; or
- (e) where a person or company fails or neglects to comply with the minimum net asset requirements, investment restrictions, ownership restrictions, or capital requirements prescribed by the regulations for the person or company,

apply to a judge of the Supreme Court for the appointment of a receiver, receiver and manager, trustee or liquidator of the property of the person or company.

(2) Upon an application under subsection 1, the judge ^{Appointment} may, where he is satisfied that the appointment of a receiver, receiver and manager, trustee or liquidator of all or any part of the property of any person or company is in the best interests of the creditors of the person or company or of persons or companies any of whose property is in the possession or under the control of the person or company, or, in a proper case, of the security holders of or subscribers to the person or company, appoint a receiver, receiver and manager, trustee or liquidator of the property of the person or company. R.S.O. 1970, c. 426, s. 27 (1, 2), *amended*.

(3) Upon an *ex parte* application made by the Commission ^{Ex parte application} under this section, the judge may make an order under subsection 2 appointing a receiver, receiver and manager, trustee or liquidator for a period not exceeding fifteen days. R.S.O. 1970, c. 426, s. 27 (3), *amended*.

Powers of
receiver, etc.

(4) A receiver, receiver and manager, trustee or liquidator of the property of any person or company appointed under this section shall be the receiver, receiver and manager, trustee or liquidator of all or any part of the property belonging to the person or company or held by the person or company on behalf of or in trust for any other person or company, and the receiver, receiver and manager, trustee or liquidator shall have authority, if so directed by the judge, to wind up or manage the business and affairs of the person or company and all powers necessary or incidental thereto.

Enforcement
of order

(5) An order made under this section may be enforced in the same manner as any order or judgment of the Supreme Court and may be varied or discharged upon an application made by notice.

Rules of
practice

(6) Upon an application made under this section, the rules of practice of the Supreme Court apply. R.S.O. 1970, c. 426, s. 27 (4-6), *amended*.

PART VII

AUDITS

Audits by
Commission

18.—(1) Notwithstanding anything in sections 19, 20 and 21, the Commission may in writing appoint any person to examine at any time,

- (a) the financial affairs of a registrant or a reporting issuer; and
- (b) the books and records of a custodian of assets of a mutual fund or of a custodian of shares or units of a mutual fund under a custodial agreement or other arrangement with a person or company engaged in the distribution of shares or units of the mutual fund,

and prepare such financial or other statements and reports that may be required by the Commission.

Access to
records

(2) The person making an examination under this section may inquire into and examine all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the person or company whose financial affairs are being examined, and no person or company shall withhold, destroy, conceal or refuse to give any information or thing reasonably required for the purpose of the examination.

Fees

(3) The Commission may charge such fees as may be prescribed by the regulations for any examination made under this section. R.S.O. 1970, c. 426, s. 33, *amended*.

PART VIII

SELF-REGULATION—GENERALLY

19. Every stock exchange in Ontario recognized by the Commission, the Ontario District of the Investment Dealers' Association of Canada and the Broker-Dealers' Association of Ontario, shall, ^{Panel of auditors}

- (a) select a panel of auditors, each of whom shall have practised as such in Ontario for not fewer than five years and shall be known as a panel auditor or members' auditor; and
- (b) employ an exchange auditor, district association auditor or association auditor, as the case may be, whose appointment is subject to the approval of the Commission, and the appointee shall be an auditor who has practised as such in Ontario for not fewer than ten years. R.S.O. 1970, c. 426, s. 30.

20.—(1) Every stock exchange in Ontario recognized by the Commission, the Ontario District of the Investment Dealers' Association of Canada and the Broker-Dealers' Association of Ontario shall cause each member of such class or classes of their members as the Commission may designate in writing to appoint an auditor from the panel of auditors selected under clause *a* of section 19 and such auditor shall make the examination of the financial affairs of such member as called for by the by-laws, rules or regulations applicable to members of such class or classes and shall report thereon to the exchange auditor, district association auditor or association auditor, as the case may be. ^{Audits by stock exchange and associations}

(2) The by-laws, rules and regulations of every stock exchange in Ontario recognized by the Commission, the rules and regulations of the Ontario District of the Investment Dealers' Association of Canada and the regulations of the Broker-Dealers' Association of Ontario in respect of the practice and procedure of the examinations under subsection 1 are subject to the approval of the Commission and the actual conduct of the examinations shall be satisfactory to the Commission. R.S.O. 1970, c. 426, s. 31. ^{Audit by-laws subject to approval}

21. Every registrant whose financial affairs are not subject to examination under section 20 shall keep such books and records as are necessary for the proper recording of his business transactions and financial affairs and shall deliver to the Commission annually and at such other time or times as the Commission may require a financial statement ^{Filing of financial statements of registrants}

satisfactory to the Commission as to his financial position, certified by the registrant or an officer or partner of the registrant and reported upon by the auditor of the registrant, and shall deliver to the Commission such other information as the Commission may require in such form as it may prescribe. R.S.O. 1970, c. 426, s. 32.

PART IX

STOCK EXCHANGES

Stock
exchanges

22.—(1) No person or company shall carry on business as a stock exchange in Ontario unless such stock exchange is recognized in writing as such by the Commission.

Commission's
powers

(2) The Commission may, where it appears to it to be in the public interest, make any decision,

- (a) with respect to the manner in which any stock exchange in Ontario carries on business;
- (b) with respect to any by-law, ruling, instruction, or regulation of any such stock exchange;
- (c) with respect to trading on or through the facilities of any such stock exchange or with respect to any security listed and posted for trading on any such stock exchange; or
- (d) to ensure that issuers whose securities are listed and posted for trading on any such stock exchange comply with this Act and the regulations.

Review of
decisions of
stock
exchange

(3) Any person or company directly affected by any direction, order or decision made under any by-law, rule or regulation of a stock exchange in Ontario may apply to the Commission for a hearing and review thereof and section 8 applies to the hearing and review in the same manner as to the hearing and review of a decision of the Director. R.S.O. 1970, c. 426, s. 140.

Record of
transactions

23. Every stock exchange in Ontario shall keep a record showing the time at which each transaction on such stock exchange took place and shall supply to any customer of any member of such stock exchange, upon production of a written confirmation of any transaction with such member, particulars of the time at which the transaction took place and verification or otherwise of the matters set forth in the confirmation. R.S.O. 1970, c. 426, s. 141.

PART X

REGISTRATION

24.—(1) No person or company shall,

Registration
for trading

- (a) trade in a security unless the person or company is registered as a dealer, or is registered as a salesman or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;
- (b) act as an underwriter unless the person or company is registered as an underwriter;
- (c) act as an adviser unless the person or company is registered as an adviser, or is registered as a partner or as an officer of a registered adviser and is acting on behalf of the adviser;
- (d) act as a mutual fund unless the person or company is registered as a mutual fund;
- (e) act as a management company unless the person or company is registered as a management company;
or
- (f) act as a contractual plan service company unless the person or company is registered as a contractual plan service company,

and the registration has been made in accordance with this Act and the regulations and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions. R.S.O. 1970, c. 426, s. 6 (1).

(2) The termination of the employment of a salesman with a registered dealer shall operate as a suspension of the registration of the salesman until notice in writing has been received by the Director from another registered dealer of the employment of the salesman by the other registered dealer and the reinstatement of the registration has been approved by the Director.

Termination
re salesman

Non-trading
employee

(3) The Director may designate as non-trading any employee or class of employees of a registered dealer that does not usually sell securities, but the designation may be cancelled as to any employee or class of employees where the Director is satisfied that any such employee or any member of such class of employees should be required to apply for registration as a salesman. R.S.O. 1970, c. 426, s. 6 (4, 5).

Granting of
registration

25.—(1) The Director shall grant registration, renewal of registration, reinstatement of registration or amendment to registration to an applicant where in the opinion of the Director the applicant is suitable for registration and the proposed registration or amendment to registration is not objectionable. R.S.O. 1970, c. 426, s. 7 (1), *amended*.

Terms and
conditions

(2) The Director may in his discretion restrict a registration by imposing terms and conditions thereon and, without limiting the generality of the foregoing, may restrict the duration of a registration and may restrict the registration to trades in certain securities or a certain class of securities. R.S.O. 1970, c. 426, s. 7 (3).

Refusal

(3) The Director shall not refuse to grant, renew, reinstate or amend registration or impose terms and conditions thereon without giving the applicant an opportunity to be heard. R.S.O. 1970, c. 426, s. 7 (2).

Suspension,
cancellation,
etc.

26.—(1) The Commission, after giving a registrant an opportunity to be heard, may suspend, cancel, restrict or impose terms and conditions upon the registration or reprimand the registrant where in its opinion such action is in the public interest.

Interim
suspension

(2) Where the delay necessary for a hearing under subsection 1 would, in the opinion of the Commission, be prejudicial to the public interest, the Commission may suspend the registration without giving the registrant an opportunity to be heard, in which case it shall forthwith notify the registrant of the suspension and of a hearing and review to be held before the Commission within fifteen days of the date of the suspension, which hearing and review shall be deemed to be a hearing and review under section 8. R.S.O. 1970, c. 426, s. 8, *amended*.

Surrender

(3) Notwithstanding subsection 1, the Commission may, upon an application by a registrant, accept, subject to such terms and conditions as it may impose, the voluntary surrender of the registration of the registrant where it is satisfied the financial obligations of the registrant to its clients have been discharged and the surrender of the registration would not be prejudicial to the public interest. *New*.

27. A further application for registration may be made ^{Subsequent applications} upon new or other material or where it is clear that material circumstances have changed. R.S.O. 1970, c. 426, s. 9.

28. An application for registration shall be made in ^{Application} writing upon a form prescribed by the regulations and provided by the Commission, and shall be accompanied by such fee as may be prescribed by the regulations. R.S.O. 1970, c. 426, s. 10.

29. Every applicant shall state in the application an address ^{Address for service} for service in Ontario and, except as otherwise provided in this Act, all notices under this Act or the regulations are sufficiently served for all purposes if delivered or sent by prepaid mail to the latest address for service so stated. R.S.O. 1970, c. 426, s. 11.

30. The Director may require any further information or ^{Further information} material to be submitted by an applicant or a registrant within a specified time and may require verification by affidavit or otherwise of any information or material then or previously submitted or may require the applicant or the registrant or any partner, officer, director, governor or trustee of, or any person performing a like function for, or any employee of, the applicant or of the registrant to submit to examination under oath by a person designated by the Director. R.S.O. 1970, c. 426, s. 12, *amended*.

31.—(1) The Director may refuse registration to an ^{Residence} individual if he has not been a resident of Canada for at least one year immediately prior to the date of application for registration and if he is not a resident of Ontario at the date of the application unless at the time of the application the individual is registered in a capacity corresponding to that of a dealer, adviser, underwriter, mutual fund, management company, contractual plan service company, partner, officer, or salesman under the securities laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is, in the opinion of the Director, otherwise suitable for registration.

(2) The Director may refuse registration to a person or ^{Idem} company if any director or officer of the person or company has not been a resident of Canada for at least one year immediately prior to the date of application for registration and is not a resident of Ontario at the date

of the application unless at the time of the application he is registered in a capacity corresponding to that of a dealer, adviser, underwriter, mutual fund, management company, contractual plan service company, partner, officer or salesman under the securities laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is, in the opinion of the Director, otherwise suitable for registration. R.S.O. 1970, c. 426, s. 14, *amended*.

Notice of
changes

32.—(1) Every registered dealer shall, within five days of the event, notify the Director in the form prescribed by the regulations of,

- (a) any change in address for service in Ontario or any business address;
- (b) (i) any change in the directors or officers of the registered dealer and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefor, and
 - (ii) any change in the holders of the voting securities of the registered dealer;
- (c) the commencement and termination of employment of every salesman and, in the case of termination of employment, the reason therefor;
- (d) the opening or closing of any branch office in Ontario and, in the case of the opening of any branch office in Ontario, the name and address of the person in charge thereof; and
- (e) any change in the name or address of the person in charge of any branch office in Ontario.

Idem

(2) Every registered adviser, underwriter, mutual fund, management company, and contractual plan service company shall, within five days of the event, notify the Director in the form prescribed by the regulations of,

- (a) any change in address for service in Ontario or any business address; and
- (b) (i) any change in the directors or officers of the registered adviser, underwriter, mutual fund, management company or contractual plan service company and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefor, and

- (ii) any change in the holders of the voting securities of the registered adviser, underwriter, mutual fund, management company or contractual plan service company.

(3) Every registered salesman shall, within five days of the ^{Idem} event, notify the Director in the form prescribed by the regulations of,

- (a) any change in his address for service in Ontario or in his business address; and
- (b) every commencement and termination of his employment by a registered dealer.

(4) The Director may, upon an application of a registrant ^{Exemptions} that is a reporting issuer, exempt, subject to such terms and conditions as he may impose, the registrant from the requirement of subsections 1 and 2 that the Director be notified of any change in the holders of voting securities of the registrant where in his opinion it would not be prejudicial to the public interest to do so. R.S.O. 1970, c. 426, s. 15, *amended*.

PART XI

EXEMPTIONS FROM REGISTRATION REQUIREMENTS

33. Registration as an adviser is not required to be ^{Exemptions of advisers} obtained by,

- (a) a bank to which the *Bank Act* (Canada) applies, or ^{R.S.C. 1970, c. B-1, 1974-75, c. 14 (Can.)} the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada), or a trust company registered under *The Loan and Trust Corporations Act*, or an ^{R.S.O. 1970, cc. 254, 224} insurance company licensed under *The Insurance Act*;
- (b) a lawyer, accountant, engineer or teacher;
- (c) a registered dealer, or any partner, officer or employee thereof; and
- (d) a publisher of or any writer for any *bona fide* newspaper, news magazine or business or financial publication of general and regular paid circulation distributed only to subscribers thereto for value or to purchasers thereof, who gives advice as an adviser only through such publication and has no interest either directly or indirectly in any of the securities upon which the advice is given and receives no

commission or other consideration for giving the advice,

where the performance of the service as an adviser is solely incidental to their principal business or occupation; or

(e) a management company; or

(f) such other persons or companies as are designated by the regulations. R.S.O. 1970, c. 426, s. 18, *amended*.

Exemptions
of mutual
funds

34. Registration as a mutual fund is not required to be obtained by,

(a) an investment club if,

- i. its shares or units are held by not more than fifty persons,
- ii. it does not pay or give any remuneration under a management contract or in respect of any trade in securities except normal brokerage fees, and
- iii. all of its members are required to make contributions in proportion to the shares or units each holds for the purpose of investment;

R.S.O. 1970,
c. 254

(b) a trust company registered under *The Loan and Trust Corporations Act* that issues securities in respect of,

- i. a pooled fund maintained solely to serve its registered retirement savings plans, registered home ownership savings plans, or other savings plans registered under the *Income Tax Act* (Canada),
- ii. a common trust fund as defined by subsection 1 of section 85 of *The Loan and Trust Corporations Act*, or
- iii. a pooled fund maintained by a trust company in which moneys belonging to various trusts in its care are commingled with the authority of the settlor, testator or trustee for the purpose of facilitating investment;

1970-71,
c. 68 (Can.)

R.S.O. 1970,
c. 224

(c) an insurance company licensed under the *Insurance Act*;

- (d) such other persons or companies as are designated by the regulations. *New.*

35.—(1) Subject to the regulations, registration is not required in respect of the following trades: Exemption
of trades

1. A trade by an executor, administrator, guardian or committee or by an authorized trustee or assignee, an interim or official receiver or a custodian under the *Bankruptcy Act* (Canada) or by a receiver under *The Judicature Act* or by a liquidator under *The Corporations Act*, *The Business Corporations Act*, or the *Winding-up Act* (Canada), or at a judicial sale. R.S.C. 1970,
cc. B-3, W-10
R.S.O. 1970,
cc. 228, 89, 53
2. An isolated trade in a specific security by or on behalf of an owner or issuer, for the owner's or issuer's account, where the trade is not made in the course of continued and successive transactions of a like nature, and is not made by a person or company whose usual business is trading in securities.
3. A trade where the party purchasing as principal is,
 - i. a bank to which the *Bank Act* (Canada) applies, or the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada), R.S.C. 1970,
c. B-1,
1974-75,
c. 14 (Can.)
 - ii. a loan corporation or trust company registered under *The Loan and Trust Corporations Act*, R.S.O. 1970,
c. 254
 - iii. an insurance company licensed under *The Insurance Act*, R.S.O. 1970,
c. 224
 - iv. Her Majesty in right of Canada or any province or territory of Canada, or
 - v. any municipal corporation or public board or commission in Canada.
4. A trade where the party purchasing as principal is a company or a person, other than an individual, and is recognized by the Commission as an exempt purchaser.
5. A trade where the purchaser purchases as principal, if the trade is in a security which has an aggregate acquisition cost to such purchaser of not less than \$97,000.

6. A trade from the holdings of any person, company or combination of persons or companies described in subparagraph iii of paragraph 12 of subsection 1 of section 1 for the purpose of giving collateral for a *bona fide* debt.
7. A trade by or for the account of a pledgee, mortgagee or other encumbrancer for the purpose of liquidating a *bona fide* debt by selling or offering for sale a security pledged, mortgaged or otherwise encumbered in good faith as collateral for the debt.
8. A trade in a security that may occasionally be transacted by employees of a registered dealer where the employees do not usually sell securities and have been designated by the Director as non-trading employees, either individually or as a class.
9. A trade between a person or company and an underwriter acting as purchaser or between or among underwriters.
10. A trade in a security by a person or company,
 - (a) acting solely through an agent who is a registered dealer; or
 - (b) who places an unsolicited order to purchase or sell with,
 - i. a bank to which the *Bank Act* (Canada) applies, or
 - ii. a trust company registered under *The Loan and Trust Corporations Act*,
 for execution through an agent who is a registered dealer.
11. A trade by an issuer,
 - i. in a security of its own issue that is distributed by it to holders of its securities as a stock dividend or other distribution out of earnings or surplus,
 - ii. in a security whether of its own issue or not that is distributed by it to holders of its

R.S.C. 1970,
c. B-1

R.S.O. 1970,
c. 254

securities as incidental to a *bona fide* re-organization or winding up of such issuer or distribution of its assets for the purpose of winding up its affairs pursuant to the laws of the jurisdiction in which the issuer is incorporated, organized or continued,

- iii. in a right, transferable or otherwise, granted by the issuer to holders of its securities to purchase additional securities of its own issue and the issue of securities pursuant to the exercise of the right if the issuer has given the Commission written notice stating the date, amount, nature and conditions of the proposed sale, including the approximate net proceeds to be derived by the issuer on the basis of such additional securities being fully taken up and paid for, and either,

- (a) the Commission has not informed the issuer in writing within ten days of the giving of the notice that it objects to the proposed trade; or

- (b) the issuer has delivered to the Commission information relating to the security that is satisfactory to, and accepted by, the Commission, or

- iv. in securities of its own issue, or those of a reporting issuer held by it, transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,

provided that, with respect to any trade referred to in subparagraph i or ii, no commission or other remuneration is paid or given to others in respect of the distribution except for ministerial or professional services or for services performed by a registered dealer.

- 12. A trade in a security of a company that is exchanged by or for the account of the company with another company or the holders of the securities of that other company in connection with,

- (a) a statutory amalgamation or arrangement;
or

- (b) a statutory procedure under which one company takes title to the assets of the other company which in turn loses its existence by operation of law, or under which the existing companies merge into a new company.
13. A trade in a security of a company that is exchanged by or for the account of the company with the security holders of another company in connection with a take-over bid as defined in Part XIX.
 14. A trade in a security of an issuer in connection with a take-over bid exempted from the requirements of Part XIX by subsection 2 of section 90.
 15. A trade by an issuer in a security of its own issue as consideration for a portion or all of the assets of any person or company, if the fair value of the assets so purchased is not less than \$100,000.
 16. A trade by an issuer in the securities of its own issue with its employees or the employees of an affiliate who are not induced to purchase by expectation of employment or continued employment.
 17. A trade made between an issuer in securities of its own issue and not more than twenty-five purchasers or made between such purchasers if each of the following requirements is satisfied,
 - i. each purchaser purchases as principal,
 - ii. each purchaser,
 - (a) is an investor who, by virtue of his net worth and investment experience or by virtue of consultation with or advice from a registered adviser, is able to evaluate the prospective investment on the basis of information respecting the investment presented to him by the issuer or has access to substantially the same information concerning the issuer which the filing of a prospectus under this Act would provide; or
 - (b) is a senior officer or director of the issuer or his spouse, parent, brother, sister, or child,

- iii. the offer and sale of the securities are not accompanied by an advertisement and no selling or promotional expenses have been paid or incurred in connection therewith, except for professional services or for services performed by a registered dealer,
 - iv. solicitations in respect of the securities have not been made to more than fifty prospective purchasers, and
 - v. there are not more than twenty-five beneficial owners of securities as a result of trades pursuant to this exemption.
18. A trade in a commodity futures option or a commodity futures contract where such trade is a *bona fide* hedging transaction within the meaning of *The Commodity Futures Act, 1977*. 1977, c. . . .
19. A trade in respect of which the regulations provide that registration is not required.
- (2) Subject to the regulations, registration is not required Exemption
re securities to trade in the following securities:
- 1. Bonds, debentures or other evidences of indebtedness,
 - (a) of or guaranteed by the Government of Canada or any province of Canada or by the Government of the United Kingdom or any foreign country or any political division thereof;
 - (b) of any municipal corporation in Canada, including debentures issued for public, separate, secondary or vocational school purposes, or guaranteed by any municipal corporation in Canada, or secured by or levied under the law of any province of Canada on property in such province and collectable by or through the municipality in which such property is situated;
 - (c) of or guaranteed by a bank to which the *Bank Act* (Canada) applies, a trust company or loan corporation registered under *The Loan and Trust Corporations Act* or an insurance company licensed under *The Insurance Act*; R.S.C. 1970,
c. B-1
R.S.O. 1970,
cc. 254, 224 or
 - (d) of or guaranteed by the International Bank for Reconstruction and Development established by the Agreement for an Inter-

R.S.C. 1970,
c. B-9

national Bank for Reconstruction and Development approved by the *Bretton Woods Agreements Act* (Canada), if the bonds, debentures, or evidences of indebtedness are payable in the currency of Canada or the United States of America.

R.S.O. 1970,
c. 224

2. Contracts of insurance issued by an insurance company licensed under *The Insurance Act* other than variable contracts that do not guarantee to return on the termination of the policy an amount equal to at least three-quarters of the premiums paid to the date of termination.

R.S.O. 1970,
c. 254

3. Certificates or receipts issued by a trust company registered under *The Loan and Trust Corporations Act* for moneys received for guaranteed investment.

4. Securities issued by a trust company registered under *The Loan and Trust Corporations Act* in respect of,

(a) a pooled fund maintained solely to serve its registered retirement savings plans, registered home ownership savings plans, or other savings plans registered under the *Income Tax Act* (Canada);

(b) a common trust fund as defined by subsection 1 of section 85 of *The Loan and Trust Corporations Act*; or

(c) a pooled fund maintained by a trust company in which moneys belonging to various trusts in its care are commingled with the authority of the settlor, testator or trustee for the purpose of facilitating investment.

5. Securities issued by an investment club if,

(a) its shares or units are held by not more than fifty persons;

(b) it does not pay or give any remuneration under a management contract or in respect of a trade in securities except normal brokerage fees; and

1970-71,
c. 63 (Can.)

- (c) all of its members are required to make contributions in proportion to the shares or units each holds for the purpose of investment.
6. Negotiable promissory notes or commercial paper maturing not more than one year from the date of issue, provided that each such note or commercial paper traded to an individual has a denomination or principal amount of not less than \$50,000.
 7. Mortgages or other encumbrances upon real or personal property, other than mortgages or other encumbrances contained in or secured by a bond, debenture or similar obligation or in a trust deed or other instrument to secure bonds or debentures or similar obligations, if such mortgages or other encumbrances are offered for sale by a person or company registered or exempted from registration under *The Mortgage Brokers Act*. R.S.O. 1970,
c. 278
 8. Securities evidencing indebtedness due under any conditional sales contract or other title retention contract providing for the acquisition of personal property if such securities are not offered for sale to an individual.
 9. Securities issued by an issuer organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit, where no part of the net earnings of such issuer enure to the benefit of any security holder and no commission or other remuneration is paid in connection with the sale thereof.
 10. Securities issued by corporations to which *The Co-operative Corporations Act, 1973* applies. 1973, c. 101
 11. Shares of a credit union within the meaning of *The Credit Unions Act*. R.S.O. 1970,
c. 96
 12. Securities of a private company where they are not offered for sale to the public.
 13. Securities issued and sold by a prospector for the purpose of financing a prospecting expedition.

14. Securities issued by a prospecting syndicate that has filed a prospecting syndicate agreement under Part XIII for which the Director has issued a receipt, where the securities are sold by the prospector or one of the prospectors who staked claims that belong to or are the subject of a declaration of trust in favour of the prospecting syndicate, and the prospector delivers the copy of the prospecting syndicate agreement to the person or company purchasing the security before accepting payment therefor.
15. Securities issued by a prospecting syndicate that has filed a prospecting syndicate agreement under Part XIII for which the Director has issued a receipt, if the securities are not offered for sale to the public and are sold to not more than fifty persons or companies.
16. Securities issued by a mining company or a mining exploration company as consideration for mining claims where the vendor enters into such escrow or pooling agreement as the Director considers necessary.
17. Securities in respect of which the regulations provide that registration is not required. R.S.O. 1970, c. 426, s. 19 (1, 2); 1971, c. 31, s. 3, *amended*.

Trades
by trust
company
R.S.O. 1970,
c. 254

(3) For the purpose of subsection 1, a trust company registered under *The Loan and Trust Corporations Act* shall be deemed to be acting as principal when it trades as trustee for accounts fully managed by it. *New*.

PART XII

TRADING IN SECURITIES GENERALLY

Confirmation
of trade

36.—(1) Every registered dealer who has acted as principal or agent in connection with any trade in a security shall promptly send by prepaid mail or deliver to the customer a written confirmation of the transaction, setting forth,

- (a) the quantity and description of the security;
- (b) the consideration;

- (c) whether or not the registered dealer is acting as principal or agent;
 - (d) if acting as agent in a trade, the name of the person or company from or to or through whom the security was bought or sold;
 - (e) the date and the name of the stock exchange, if any, upon which the transaction took place;
 - (f) the commission, if any, charged in respect of the trade; and
 - (g) the name of the salesman, if any, in the transaction.
- R.S.O. 1970, c. 426, s. 67 (1).

(2) Where a trade is made in a security of a mutual fund, ^{Idem} the confirmation shall contain, in addition to the requirements of subsection 1,

- (a) the price per share or unit at which the trade was effected; and
- (b) the amount deducted by way of sales, service and other charges.

(3) Where a trade is made in a security of a mutual fund ^{Idem} under a contractual plan, the confirmation shall contain in addition to the requirements of subsections 1 and 2,

- (a) in respect of an initial payment made under a contractual plan which requires the prepayment of sales, service and other charges, a statement of the initial payment and the portion of the sales, service and other charges that is allocated to subsequent investments in the mutual fund and the manner of allocation thereof;
- (b) in respect of each subsequent payment made under a contractual plan which requires the prepayment of sales, service and other charges, a statement of the portion of the sales, service and other charges, that is allocated to the payment which is the subject of the confirmation;
- (c) in respect of an initial purchase made under a contractual plan which permits the deduction of sales,

service and other charges from the first and subsequent instalments, a brief statement of the sales, service and other charges to be deducted from subsequent purchases;

- (d) in respect of each purchase made under a contractual plan, a statement of the total number of shares or units of the mutual fund acquired and the amount of sales charges paid under the contractual plan up to the date the confirmation is sent or delivered.
New.

Coded
identification

- (4) For the purposes of clauses *d* and *g* of subsection 1, a person or company or a salesman may be identified in a written confirmation by means of a code or symbols if the written confirmation also contains a statement that the name of the person, company or salesman will be furnished to the customer on request.

Filing
of code

- (5) Where a person or company uses a code or symbols for identification in a confirmation under subsection 1, the person or company shall forthwith file the code or symbols and their meaning, and shall notify the Commission within five days of any change in or addition to the code or symbols or their meaning. R.S.O. 1970, c. 426, s. 67 (2, 3).

Disclosure
by agent

- (6) Every dealer who has acted as agent in connection with any trade in a security shall promptly disclose to the Commission, upon request by the Commission, the name of the person or company from or to or through whom the security was bought or sold. R.S.O. 1970, c. 426, s. 67 (4), *amended*.

Order
prohibiting
calls to
residences

- 37.**—(1) The Director may, by order, suspend, cancel, restrict or impose terms and conditions upon the right of any person or company named in the order to,

(a) call at any residence; or

(b) telephone from within Ontario to any residence within or outside Ontario,

for the purpose of trading in any security. R.S.O. 1970, c. 426, s. 68 (1), *amended*.

Hearing

- (2) The Director shall not make an order under subsection 1 without giving the person or company affected an opportunity to be heard. *New.*

(3) In this section, "residence" includes any building or part of a building in which the occupant resides either permanently or temporarily and any premises appurtenant thereto. ^{"residence" defined}

(4) For the purposes of this section, a person or company shall be deemed conclusively to have called or telephoned where an officer, director or salesman of the person or company calls or telephones on its behalf. R.S.O. 1970, c. 426, s. 68 (3, 4). ^{What constitutes calls}

38.—(1) No person or company, with the intention of effecting a trade in a security, other than a security that carries an obligation of the issuer to redeem or purchase, or a right of the owner to require redemption or purchase, shall make any representation, written or oral, that he or any person or company, ^{Representations prohibited}

(a) will resell or repurchase; or

(b) will refund all or any of the purchase price of,

such security.

(2) No person or company, with the intention of effecting a trade in a security, shall give any undertaking, written or oral, relating to the future value or price of such security. ^{Future value}

(3) No person or company, with the intention of effecting a trade in a security, shall, except with the written permission of the Director, make any representation, written or oral, that such security will be listed on any stock exchange or that application has been or will be made to list such security upon any stock exchange. ^{Listing}

(4) This section does not apply to any representation referred to in subsection 1 made to a person, other than an individual, or to a company where the representation is contained in a written agreement signed by the person or company intending to effect a trade in a security and the security has an aggregate acquisition cost of more than \$50,000. R.S.O. 1970, c. 426, s. 69. ^{Application of section}

39.—(1) Where a registered dealer, with the intention of effecting a trade in a security with any person or company other than another registered dealer, issues, publishes or sends a circular, pamphlet, letter, telegram or advertisement, and proposes to act in the trade as a principal, the registered dealer shall so state in the circular, pamphlet, letter, telegram or advertisement or otherwise in writing before entering into ^{Where dealer is principal}

a contract for the sale or purchase of any such security and before accepting payment or receiving any security or other consideration under or in anticipation of any such contract. R.S.O. 1970, c. 426, s. 70 (1).

Effect of
statement

(2) A statement made in compliance with this section or clause *c* of subsection 1 of section 36 that a dealer proposes to act or has acted as principal in connection with a trade in a security does not prevent such dealer from acting as agent in connection with a trade of such security.

Application
of section

(3) This section does not apply to trades referred to in subsection 1 of section 35 or to securities referred to in subsection 2 of section 35. R.S.O. 1970, c. 426, s. 70 (3, 4).

Disclosure of
financial
interest of
advisers and
dealers

40. Every registered adviser shall cause to be printed in a conspicuous position on every circular, pamphlet, advertisement, letter, telegram and other publication issued, published or sent out by him, in which the adviser recommends that a specific security be purchased, sold or held, in type not less legible than that used in the body of the circular, pamphlet, advertisement, letter or other publication, a full and complete statement of any financial or other interest that he or any partner, director, officer or a person or company that would be an insider of the adviser if the adviser was a reporting issuer may have either directly or indirectly in any securities referred to therein or in the sale or purchase thereof, including,

- (a) any ownership, beneficial or otherwise, that any of them may have in respect of such securities or in any securities issued by the same issuer;
- (b) any option that any of them may have in respect of such securities, and the terms thereof;
- (c) any commission or other remuneration that any of them has received or may expect to receive from any person or company in connection with any trade in such securities;
- (d) any financial arrangement relating to such securities that any of them may have with any person or company; and
- (e) any financial arrangement that any of them may have with any underwriter or other person or company who has any interest in the securities. R.S.O. 1970, c. 426, s. 72, *amended*.

Idem

41. Every registered dealer, that recommends a purchase, sale, exchange or hold of a security in any circular, pamphlet,

advertisement, letter, telegram or other publication issued, published or sent by it shall, in type not less legible than that used in the body of the publication, state whether it has at any time during the past year acted as an underwriter of such securities or as a financial adviser to the issuer of such securities or is presently acting as a financial adviser to the issuer of such securities or whether it will receive any fees as a result of the recommended action. *New.*

42. Every registered dealer shall publish the name of every person or company having an interest, either directly or indirectly, to the extent of not less than 5 per cent in the capital of the dealer, on all letterheads, circulars and stationery that contain any offer or solicitation respecting a trade in securities or in a preliminary prospectus or prospectus upon or in which the name of the registered dealer appears as underwriter. R.S.O. 1970, c. 426, s. 73, *amended*. Publication of names

43. No registrant shall use the name of another registrant on letterheads, forms, advertisements or signs, as correspondent or otherwise, unless he is a partner, officer or agent of or is authorized so to do in writing by the other registrant. R.S.O. 1970, c. 426, s. 74. Use of name of another registrant

44. No person or company shall hold himself out as being registered by having printed in a circular, pamphlet, advertisement, letter, telegram or other stationery that he is registered. R.S.O. 1970, c. 426, s. 75. Registration not to be advertised

45. No person or company who is not registered shall, either directly or indirectly, hold himself out as being registered. R.S.O. 1970, c. 426, s. 76. Holding out by unregistered person

46. No person or company shall make any representation, written or oral, that the Commission has in any way passed upon the financial standing, fitness or conduct of any registrant or upon the merits of any security or issuer. R.S.O. 1970, c. 426, s. 77. Advertising approval by Commission

47.—(1) Where a person, or a partner or employee of a partnership, or a director, officer or employee of a company, after he or the partnership or company has contracted as a registered dealer with any customer to buy and carry upon margin any securities of any issuer either in Canada or elsewhere, and while such contract continues, sells or causes to be sold securities of the same issuer for any account in which, Margin contracts

(a) he;

(b) his firm or a partner thereof; or

(c) the company or a director thereof,

has a direct or indirect interest, if the effect of such sale would, otherwise than unintentionally, be to reduce the amount of such securities in the hands of the dealer or under his control in the ordinary course of business below the amount of such securities that the dealer should be carrying for all customers any such contract with a customer is, at the option of the customer, voidable, and the customer may recover from the dealer all moneys paid with interest thereon or securities deposited in respect thereof.

Exercise
of option

(2) The customer may exercise such option by a notice to that effect sent by prepaid mail addressed to the dealer at his address for service in Ontario. R.S.O. 1970, c. 426, s. 78.

Declaration
as to short
position

48. Any person or company who places an order for the sale of a security through an agent acting for him that is a registered dealer and, who,

(a) at the time of placing the order, does not own the security; or

(b) if acting as agent, knows his principal does not own the security,

shall, at the time of placing the order to sell, declare to his agent that he or his principal, as the case may be, does not own the security. R.S.O. 1970, c. 426, s. 79.

Shares in
name of
registrant
not to be
voted

49.—(1) Subject to subsection 4, voting securities of an issuer registered in the name of,

(a) a registrant or in the name of his nominee; or

(b) a custodian or in the name of his nominee, where such issuer is a mutual fund,

that are not beneficially owned by the registrant or the custodian, as the case may be, shall not be voted by the registrant or custodian at any meeting of security holders of the issuer.

Forwarding
of informa-
tion by
registrant

(2) Forthwith after receipt of a copy of a notice of a meeting of security holders of an issuer, the registrant or custodian shall, where the name and address of the beneficial owner of securities registered in the name of the registrant or custodian are known, send or deliver to each beneficial owner of such security, a copy of any notice, financial statement, information circular or other material unless the beneficial

owner agrees in writing that such notice, statements, circular and other material need not be sent or delivered. R.S.O. 1970, c. 426, s. 80 (1), *amended*.

(3) At the request of a registrant or custodian, the person or company sending material referred to in subsection 2 shall forthwith furnish to the registrant or custodian, at the expense of the sender, the requisite number of copies of the material. Copies of information

(4) A registrant or custodian shall vote or give a proxy requiring a nominee to vote any voting securities referred to in subsection 1 in accordance with any written voting instructions received from the beneficial owner. Voting of shares

(5) A registrant or custodian shall, if requested in writing by a beneficial owner, give to the beneficial owner or his nominee a proxy enabling the beneficial owner or his nominee to vote any voting securities referred to in subsection 1. R.S.O. 1970, c. 426, s. 80 (3-5), *amended*. Proxies

(6) For the purpose of this section, "custodian" means a custodian of securities issued by a mutual fund held for the benefit of plan holders under a custodial agreement or other arrangement with a person or company engaged in, or administering a contractual plan in relation to, the distribution of securities of the mutual fund. *New*. "custodian" defined

50.—(1) Subject to subsections 2 and 3, no registered dealer shall purchase or sell shares or units of a mutual fund except in accordance with the terms of an agreement between such registered dealer and a distribution company or the mutual fund. Prohibition re secondary market in mutual fund shares

(2) The Commission may, upon application of a distribution company or mutual fund, order that the prohibition contained in subsection 1 shall not apply in respect of the shares or units of a mutual fund mentioned in the order, where it is satisfied that adequate arrangements have been made, Exemption by Commission

- (a) to permit the distribution company or mutual fund to carry out adequately its responsibilities relating to the distribution of such shares or units;
- (b) by the distribution company or mutual fund to prevent dealers in the shares or units of the mutual fund from taking undue advantage of the availability of the right to redeem the shares or units of the mutual fund; and
- (c) to facilitate enforcement of the penalty prescribed by the regulations for the early redemption of shares or

units of the mutual fund in a transaction in which the total consideration paid or to be paid by the purchaser for the shares or units is more than the sum of \$50,000.

Application
of subs. 1

(3) Subsection 1 does not apply to the shares or units of a mutual fund in respect of which a prospectus has not been filed and a receipt therefor issued by the Director within the preceding fifteen months. *New.*

Submission
of
advertising

51.—(1) The Commission may, after giving the registered dealer an opportunity to be heard, and upon being satisfied that the registered dealer's past conduct with respect to the use of advertising and sales literature affords reasonable grounds for belief that it is necessary for the protection of the public to do so, order that the registered dealer shall deliver to the Commission at least seven days before it is used, copies of all advertising and sales literature which the registered dealer proposes to use in connection with trading in securities.

Interpre-
tation

(2) For the purposes of this section,

(a) "advertising" includes television and radio commercials, newspaper and magazine advertisements and all other sales material generally disseminated through the communications media; and

(b) "sales literature" includes records, videotapes and similar material, written matter and all other material, except preliminary prospectuses and prospectuses, designed for use in a presentation to a purchaser, whether such material is given or shown to him.

Prohibition
of
advertising

(3) Where the Commission has issued an order pursuant to subsection 1, the Director may prohibit the use of the advertising and sales literature so delivered or may require that deletions or changes be made prior to its use.

Rescission
or variation
of order

(4) Where an order has been made pursuant to subsection 1, the Commission, on application of the registered dealer at any time after the date thereof, may rescind or vary the order where in its opinion it is not contrary to the public interest to do so. *New.*

Resale price
maintenance

52.—(1) Subject to subsection 2, no mutual fund or distribution company shall, by any device or arrangement, whether oral or in writing, prevent or attempt to prevent any registrant, excepting one of its salesmen, where it is a dealer, from reducing any portion of sales charges that is payable to

such registrant upon the sale by such registrant of securities of the mutual fund if the sole purpose of the reduction is to enable the purchaser to purchase the securities at a proportionately lower price.

(2) A mutual fund or distribution company may refuse to sell the securities of the mutual fund to or through any dealer if the distribution company has reasonable cause to believe and does believe, ^{Refusal to sell through dealer}

- (a) that the dealer is operating a secondary market in the securities of the mutual fund;
- (b) that the dealer was making a practice of using securities of the mutual fund supplied by it not for the purpose of making a profit thereon, but for the purpose of advertising;
- (c) that the dealer was making a practice of using securities of the mutual fund supplied by it not for the purpose of selling them at a profit but for the purpose of attracting clients in the hope of selling them other securities;
- (d) that the dealer was making a practice of engaging in misleading advertising in respect of the securities of the mutual fund supplied by it; or
- (e) that the dealer made a practice of not providing the level of servicing that purchasers of the securities of the mutual fund might reasonably expect from the dealer. *New.*

PART XIII

PROSPECTING SYNDICATES

53.—(1) Upon the filing of a prospecting syndicate agree- ^{Agreements}ment and the issuance of a receipt therefor by the Director, the liability of the members of the syndicate or parties to the agreement is limited to the extent provided by the terms of the agreement where,

- (a) the sole purpose of the syndicate is the financing of prospecting expeditions, preliminary mining development, or the acquisition of mining properties, or any combination thereof;
- (b) the agreement clearly sets out,
 - (i) the purpose of the syndicate,

- (ii) the particulars of any transaction effected or in contemplation involving the issue of units for a consideration other than cash,
- (iii) the maximum amount, not exceeding 25 per cent of the sale price, that may be charged or taken by a person or company as commission upon the sale of units in the syndicate,
- (iv) the maximum number of units in the syndicate, not exceeding $33\frac{1}{3}$ per cent of the total number of units of the syndicate, that may be issued in consideration of the transfer to the syndicate of mining properties,
- (v) the location of the principal office of the syndicate and that the principal office shall at all times be maintained in Ontario and that the Director and the members of the syndicate shall be notified immediately of any change in the location of the principal office,
- (vi) that a person or company holding mining properties for the syndicate shall execute a declaration of trust in favour of the syndicate with respect to such mining properties,
- (vii) that after the sale for cash of any issued units of the syndicate no mining properties shall be acquired by the syndicate other than by staking unless such acquisition is approved by members of the syndicate holding at least two-thirds of the issued units of the syndicate that have been sold for cash,
- (viii) that the administrative expenditures of the syndicate, including, in addition to any other items, salaries, office expenses, advertising and commissions paid by the syndicate with respect to the sale of its units, shall be limited to one-third of the total amount received by the treasury of the syndicate from the sale of its units,
- (ix) that a statement of the receipts and disbursements of the syndicate shall be furnished to the Director and to each member annually,
- (x) that 90 per cent of the vendor units of the syndicate shall be escrowed units and may be released upon the consent of the Director and that any release of such units shall not be in excess of one vendor unit for each unit of the syndicate sold for cash,

- (xi) that no securities, other than those of the syndicate's own issue, and no mining properties owned by the syndicate or held in trust for the syndicate shall be disposed of unless such disposal is approved by members of the syndicate holding at least two-thirds of the issued units of the syndicate other than escrowed units; and

- (c) the agreement limits the capital of the syndicate to a sum not exceeding \$100,000.

(2) The Director may in his discretion issue a receipt for ^{Receipt for filed agreement} a prospecting syndicate agreement filed under this section and is not required to determine whether it is in conformity with clauses *a*, *b* and *c* of subsection 1.

(3) After a receipt is issued by the Director for a prospecting ^{Application of R.S.O. 1970, c. 340} syndicate agreement, the requirements of *The Partnerships Registration Act* as to filing do not apply to the prospecting syndicate.

(4) No registered dealer shall trade in a security issued ^{Prohibition of trading by dealer} by a prospecting syndicate either as agent for the prospecting syndicate or as principal. R.S.O. 1970, c. 426, s. 34, *amended*.

(5) The Director shall not refuse to issue a receipt under ^{Receipt} subsection 1 without giving the person or company who filed the prospecting syndicate agreement an opportunity to be heard. *New*.

PART XIV

PROSPECTUSES—DISTRIBUTION

54.—(1) No person or company shall trade in a security ^{Prospectus required} on his own account or on behalf of any other person or company where such trade would be a distribution of such security unless a preliminary prospectus and a prospectus have been filed and receipts therefor obtained from the Director. R.S.O. 1970, c. 426, s. 35 (1), *amended*.

(2) A preliminary prospectus and a prospectus may be filed ^{Filing without distribution} in accordance with this Part to enable the issuer to become a reporting issuer, notwithstanding the fact that no distribution is contemplated. *New*.

55.—(1) A preliminary prospectus shall substantially com- ^{Preliminary prospectus} ply with the requirements of this Act and the regulations respecting the form and content of a prospectus, except

that the report or reports of the auditor or accountant required by the regulations need not be included.

Idem

(2) A preliminary prospectus may exclude information with respect to the price to the underwriter and offering price of any securities and other matters dependent upon or relating to such prices. R.S.O. 1970, c. 426, s. 38, *amended*.

Receipt for preliminary prospectus

56. The Director shall issue a receipt for a preliminary prospectus forthwith upon the filing thereof. R.S.O. 1970, c. 426, s. 35 (2).

Prospectus

57.—(1) A prospectus shall provide full, true, and plain disclosure of all material facts relating to the securities issued or proposed to be distributed and shall comply with the requirements of this Act and the regulations.

Supplemental material

(2) The prospectus shall contain or be accompanied by such financial statements, reports, or other documents as are required by this Act or the regulations. R.S.O. 1970, c. 426, s. 41, *amended*.

Amendment to preliminary prospectus on material change

58.—(1) Where a material adverse change occurs after a receipt is obtained for a preliminary prospectus filed in accordance with subsection 1 of section 54 and before the receipt for the prospectus is obtained or, where a material change occurs after the receipt for the prospectus is obtained but prior to the completion of the distribution under such prospectus, an amendment to such preliminary prospectus or prospectus, as the case may be, shall be filed as soon as practicable and in any event within ten days after the change occurs.

Notice of amendment

(2) An amendment to a preliminary prospectus referred to in subsection 1 shall, forthwith after it has been filed, be forwarded to each recipient of the preliminary prospectus according to the record maintained under section 68. R.S.O. 1970, c. 426, s. 40 (2, 3), *amended*.

Certificate by issuer

59.—(1) Subject to subsection 3, a prospectus filed under subsection 1 of section 54 shall contain a certificate in the following form, signed by the chief executive officer, the chief financial officer, and, on behalf of the board of directors, any two directors of the issuer, other than the foregoing, duly authorized to sign, and any person or company who is a promoter of the issuer:

The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by Part XIV of The Securities Act, 1977 and the regulations thereunder.

(2) Subject to subsection 3, a prospectus filed under subsection 2 of section 54 shall contain a certificate in the following form, signed by the chief executive officer, the chief financial officer, and, on behalf of the board of directors, any two directors of the issuer, other than the foregoing, duly authorized to sign, and any person or company who is a promoter of the issuer: ^{Idem}

The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities previously issued by the issuer as required by Part XIV of The Securities Act, 1977 and the regulations thereunder.

(3) Where the issuer has only three directors, two of whom are the chief executive officer and the chief financial officer, the certificate may be signed by all the directors of the issuer. ^{Idem}

(4) Where the Director is satisfied upon evidence or sub-missions made to him that either, or both of, the chief executive officer or chief financial officer of the issuer is for adequate cause not available to sign a certificate in a prospectus, the Director may permit the certificate to be signed by any other responsible officer or officers of the issuer in lieu of either, or both of, the chief executive officer or chief financial officer. ^{Idem}

(5) With the consent of the Director, a promoter need not sign the certificate in a prospectus. ^{Idem}

(6) The Director may, in his discretion, require any person or company who was a promoter of the issuer within the two preceding years to sign the certificate required by subsection 1 or 2 subject to such conditions as the Director may consider proper. ^{Certificate of promoter}

(7) With the consent of the Director, a promoter may sign a certificate in a prospectus by his agent duly authorized in writing. ^{Idem} R.S.O. 1970, c. 426, s. 52, amended.

60.—(1) Where there is an underwriter, a prospectus shall contain a certificate in the following form, signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus, are in a contractual relationship with the issuer or security holder whose securities are being offered by the prospectus: ^{Certificate of underwriter}

To the best of our knowledge, information and belief, the foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by Part XIV of The Securities Act, 1977 and the regulations thereunder.

Idem

(2) With the consent of the Director, an underwriter may sign a certificate in a prospectus by his agent duly authorized in writing. R.S.O. 1970, c. 426, s. 53, *amended*.

Statement
of rights

61. Every prospectus shall contain a statement of the rights given to a purchaser by sections 72 and 129. R.S.O. 1970, c. 426, ss. 64 (9), 65 (8), *amended*.

Issuance
of receipt

62.—(1) Subject to subsection 2, the Director shall issue a receipt for a prospectus filed under this Part unless it appears to him that it is not in the public interest to do so.

Refusal
of receipt

(2) The Director shall not issue a receipt for a prospectus if it appears to him that,

(a) the prospectus or any document required to be filed therewith,

(i) fails to comply in any substantial respect with any of the requirements of this Part or the regulations,

(ii) contains any statement, promise, estimate or forecast that is misleading, false or deceptive, or

(iii) contains a misrepresentation;

(b) an unconscionable consideration has been paid or given or is intended to be paid or given for promotional purposes or for the acquisition of property;

(c) the proceeds from the sale of the securities to which the prospectus relates that are to be paid into the treasury of the issuer, together with other resources of the issuer, are insufficient to accomplish the purpose of the issue stated in the prospectus;

(d) having regard to the financial condition of the issuer or an officer, director, promoter, or a person or company or combination of persons or companies holding sufficient of the securities of the issuer to affect materially the control of the issuer, the issuer cannot reasonably be expected to be financially responsible in the conduct of its business;

(e) the past conduct of the issuer or an officer, director, promoter, or a person or company or combination of persons or companies holding sufficient of the securities of the issuer to affect materially the

control of the issuer affords reasonable grounds for belief that the business of the issuer will not be conducted with integrity and in the best interests of its security holders;

(f) such escrow or pooling agreement as the Director considers necessary or advisable with respect to securities has not been entered into;

(g) such agreement as the Director considers necessary or advisable to accomplish the objects indicated in the prospectus for the holding in trust of the proceeds payable to the issuer from the sale of the securities pending the distribution of the securities has not been entered into;

(h) in the case of a prospectus filed by a finance company, as defined in the regulations,

(i) the plan of distribution of the securities offered is not acceptable,

(ii) the securities offered are not secured in such manner, on such terms and by such means as are required by the regulations, or

(iii) such finance company does not meet such financial and other requirements and conditions as are specified in the regulations; or

(i) a person or company who has prepared or certified any part of the prospectus or is named as having prepared or certified a report or valuation used in or in connection with a prospectus is not acceptable to him.

(3) The Director shall not refuse to issue a receipt under subsection 1 or 2 without giving the person or company who filed the prospectus an opportunity to be heard. R.S.O. 1970, c. 426, s. 61 (1, 2); 1971, c. 31, s. 16, *amended*. Hearing

(4) Where it appears to the Director that a preliminary prospectus, *pro forma* prospectus, or prospectus raises a material question involving the public interest under subsection 1 or a new or novel question of interpretation under subsection 2 that might result in the Director refusing to issue a receipt under subsection 1 or 2, the Director may refer the question to the Commission for determination. Referral to Commission

Form of question	(5) The Director shall state the question in writing setting out the facts upon which the question is based.
Filing of question	(6) The question, together with any additional material, shall be lodged by the Director with the Secretary of the Commission, and a copy of the question shall forthwith be served by the Director upon any interested person or company.
Hearing by Commission	(7) The Commission, after giving the parties an opportunity to be heard, shall consider and determine the question and refer the matter back to the Director for final consideration under subsections 1 and 2.
Decision of Commission	(8) Subject to any order of the Supreme Court made under section 9, the decision of the Commission on the question is binding on the Director. <i>New.</i>
Refiling of prospectus	<p>63.—(1) No distribution of a security shall continue longer than twelve months from either,</p> <ul style="list-style-type: none"> (a) the date of the issuance of the receipt for the preliminary prospectus relating to such security; or (b) the date of the last prospectus filed under this section, <p>as the case may be, which shall be the lapse date, unless a new prospectus that complies with this Part is filed and a receipt therefor is obtained from the Director. R.S.O. 1970, c. 426, s. 56; 1971, c. 31, s. 11, <i>amended.</i></p>
Idem	<p>(2) A distribution may be continued for a further twelve months if,</p> <ul style="list-style-type: none"> (a) a <i>pro forma</i> prospectus prepared in accordance with the regulations is filed not less than thirty days prior to the lapse date of the previous prospectus; (b) a prospectus is filed not later than ten days following the lapse date of the previous prospectus; and (c) a receipt for the prospectus is obtained from the Director within the twenty days following the lapse date of the previous prospectus.
Failure to refile	(3) Subject to any extension granted under subsection 4, all trades completed in reliance upon subsection 2 after the lapse date may be cancelled at the option of the purchaser within ninety days of the purchaser's first knowledge of the

failure to comply with such conditions where any of the conditions to the continuation of a distribution under subsection 2 are not complied with.

(4) The Commission may, upon an application of a reporting issuer, extend, subject to such terms and conditions as it may impose, the times provided by subsection 2 where in its opinion it would not be prejudicial to the public interest to do so. *New.*

64.—(1) No dealer shall engage in the distribution of a security to which section 54 or 63 is applicable until such dealer has notified the Commission in writing of his intention to engage in such distribution.

(2) Every dealer shall forthwith notify the Commission in writing when he has ceased to engage in the distribution of a security to which section 54 or 63 is applicable. R.S.O. 1970, c. 426, s. 54, *amended.*

65.—(1) Where a person or company proposing to make a distribution of previously issued securities of an issuer is unable to obtain from the issuer of the securities information or material that is necessary for the purpose of complying with this Part or the regulations, the Director may order the issuer of the securities to furnish to the person or company that proposes to make the distribution such information and material as the Director considers necessary for the purposes of the distribution, upon such terms and subject to such conditions as he considers proper, and all such information and material may be used by the person or company to whom it is furnished for the purpose of complying with this Part and the regulations.

(2) Where a person or company proposing to make a distribution of previously issued securities of an issuer is unable to obtain any or all of the signatures to the certificates required by this Act or the regulations, or otherwise to comply with this Part or the regulations, the Director may, upon being satisfied that all reasonable efforts have been made to comply with this Part and the regulations and that no person or company is likely to be prejudicially affected by such failure to comply, make such order waiving any of the provisions of this Part or the regulations as he considers advisable, upon such terms and subject to such conditions as he considers proper. R.S.O. 1970, c. 426, s. 60, *amended.*

PART XV

DISTRIBUTION—GENERALLY

“waiting
period”
defined

66.—(1) In this section, “waiting period” means the interval, which shall be at least ten days, between the issuance by the Director of a receipt for a preliminary prospectus relating to the offering of a security and the issuance by him of a receipt for the prospectus.

Distribution
of material
during
waiting
period

(2) Notwithstanding section 54, but subject to Part XII, it is permissible during the waiting period,

- (a) to distribute a notice, circular, advertisement or letter to or otherwise communicate with any person or company identifying the security proposed to be issued, stating the price thereof, if then determined, the name and address of a person or company from whom purchases of the security may be made and containing such further information as may be permitted or required by the regulations, if every such notice, circular, advertisement, letter or other communication states the name and address of a person or company from whom a preliminary prospectus may be obtained;
- (b) to distribute a preliminary prospectus; and
- (c) to solicit expressions of interest from a prospective purchaser if, prior to such solicitation or forthwith after the prospective purchaser indicates an interest in purchasing the security, a copy of the preliminary prospectus is forwarded to him. R.S.O. 1970, c. 426, s. 36.

Distribution
of
preliminary
prospectus

67. Any dealer distributing a security to which section 66 applies shall, in addition to the requirements of clause *c* of subsection 2 of section 66, send a copy of the preliminary prospectus to each prospective purchaser who, without solicitation, indicates an interest in purchasing the security and requests a copy of such preliminary prospectus. R.S.O. 1970, c. 426, s. 37, *amended*.

Distribution
list

68. Any dealer distributing a security to which section 66 applies shall maintain a record of the names and addresses of all persons and companies to whom the preliminary prospectus has been forwarded. *New*.

Defective
preliminary
prospectus

69. Where it appears to the Director that a preliminary prospectus is defective in that it does not substantially comply with the requirements of this Act and the regula-

tions as to form and content, he may, without giving notice, order that the trading permitted by subsection 2 of section 66 in the security to which the preliminary prospectus relates shall cease until a revised preliminary prospectus satisfactory to the Director is filed and forwarded to each recipient of the defective preliminary prospectus according to the record maintained under section 68. R.S.O. 1970, c. 426, s. 40 (1).

70. From the date of the issuance by the Director of a receipt for a prospectus relating to a security, a person or company trading in the security in a distribution, either on his own account or on behalf of any other person or company, may distribute the prospectus, any document filed with or referred to in the prospectus and any notice, circular, advertisement or letter of the nature described in clause *a* of subsection 2 of section 66 or in the regulations, but shall not distribute any other printed or written material respecting the security that is prohibited by the regulations. R.S.O. 1970, c. 426, s. 57; 1971, c. 31, s. 12, *amended*. Material given on distribution

71.—(1) Where it appears to the Commission, after the filing of a prospectus under this Part and the issuance of a receipt therefor, that any of the circumstances set out in subsection 2 of section 62 exist, the Commission may order that the distribution of the securities under the prospectus shall cease. Order to cease trading

(2) No order shall be made under subsection 1 without a hearing unless in the opinion of the Commission the length of time required for a hearing could be prejudicial to the public interest, in which event a temporary order may be made which shall expire fifteen days from the date of the making thereof unless the hearing is commenced in which case the Commission may extend the order until the hearing is concluded. Hearing

(3) A notice of every order made under this section shall be served upon the issuer to whose securities the prospectus relates and upon every dealer who has notified the Commission of his intention to engage in the distribution of the securities, and forthwith upon the receipt of the notice, Notice

(a) distribution of the securities under prospectus by the person or company named in the order shall cease; and

(b) any receipt issued by the Director for the prospectus is revoked. R.S.O. 1970, c. 426, s. 62; 1971, c. 31, s. 17, *amended*.

Obligation
to deliver
prospectus

72.—(1) A dealer not acting as agent of the purchaser who receives an order or subscription for a security offered in a distribution to which subsection 1 of section 54 or section 63 is applicable shall, unless he has previously done so, send by prepaid mail or deliver to the purchaser the latest prospectus and any amendment to the prospectus filed either before entering into an agreement of purchase and sale resulting from the order or subscription or not later than midnight on the second day, exclusive of Saturdays, Sundays, and holidays, after entering into such agreement.

Withdrawal
from
purchase

(2) An agreement of purchase and sale referred to in subsection 1 is not binding upon the purchaser, if the dealer from whom the purchaser purchases the security receives written or telegraphic notice evidencing the intention of the purchaser not to be bound by the agreement of purchase and sale not later than midnight on the second day, exclusive of Saturdays, Sundays, and holidays, after receipt by the purchaser of the latest prospectus and any amendment to the prospectus.

Application
of subs. 2

(3) Subsection 2 does not apply if the purchaser is a registrant or if the purchaser sells or otherwise transfers beneficial ownership of the security referred to in subsection 2, otherwise than to secure indebtedness, before the expiration of the time referred to in subsection 2.

Time of
receipt

(4) For the purpose of this section, where the latest prospectus and any amendment to the prospectus is sent by prepaid mail, the latest prospectus and any amendment to the prospectus shall be deemed conclusively to have been received in the ordinary course of mail by the person or company to whom it was addressed.

Receipt of
prospectus
by agent

(5) The receipt of the latest prospectus or any amendment to the prospectus by a dealer who is acting as agent of or who thereafter commences to act as agent of the purchaser with respect to the purchase of a security referred to in subsection 1 shall, for the purpose of this section, be receipt by the purchaser as of the date on which the agent received such latest prospectus and any amendment to the prospectus.

Receipt of
notice by
agent

(6) The receipt of the notice referred to in subsection 2 by a dealer who acted as agent of the vendor with respect to the sale of the security referred to in subsection 1 shall, for the purpose of this section, be receipt by the vendor as of the date on which the agent received such notice.

(7) For the purpose of this section, a dealer shall not be considered to be acting as agent of the purchaser unless the dealer is acting solely as agent of the purchaser with respect to the purchase and sale in question and has not received and has no agreement to receive compensation from or on behalf of the vendor with respect to the purchase and sale.

(8) The onus of proving that the time for giving notice under subsection 2 has expired is upon the dealer from whom the purchaser has agreed to purchase the security.

R.S.O. 1970, c. 426, s. 64; 1971, c. 31, s. 19, *amended*.

PART XVI

EXEMPTIONS FROM PROSPECTUS REQUIREMENTS

73.—(1) Subject to the regulations, sections 54 and 63 do not apply to a distribution where,

(a) the purchaser is,

(i) a bank to which the *Bank Act* (Canada) applies or the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada),

R.S.C. 1970,
c. B-1,
1974-75,
c. 14 (Can.)

(ii) a loan corporation or trust company registered under *The Loan and Trust Corporations Act*,

R.S.O. 1970,
c. 254

(iii) an insurance company licensed under *The Insurance Act*,

R.S.O. 1970,
c. 224

(iv) Her Majesty in right of Canada or any province or territory of Canada, or

(v) any municipal corporation or public board or commission in Canada,

who purchases as principal;

(b) the trade is an isolated trade in a specific security by or on behalf of an issuer, for the issuer's account, where such trade is not made in the course of continued and successive transactions of a like nature, and is not made by a person or company whose usual business is trading in securities;

(c) the party purchasing as principal is a company or a person, other than an individual, and is recognized by the Commission as an exempt purchaser;

- (d) the purchaser purchases as principal, if the trade is in a security which has an aggregate acquisition cost to such purchaser of not less than \$97,000;
- (e) the trade is to a lender, pledgee, mortgagee or other encumbrancer from the holdings of any person, company or combination of persons or companies described in subparagraph iii of paragraph 12 of subsection 1 of section 1 for the purpose of giving collateral for a *bona fide* debt;
- (f) the trade is made by an issuer,
 - (i) in a security of its own issue that is distributed by it to holders of its securities as a stock dividend or other distribution out of earnings or surplus,
 - (ii) in a security whether of its own issue or not that is distributed by it to holders of its securities as incidental to a *bona fide* reorganization or winding up of the issuer or distribution of its assets for the purpose of winding up its affairs pursuant to the laws of the jurisdiction in which the issuer was incorporated, organized or continued,
 - (iii) in a right, transferable or otherwise, granted by the issuer to holders of its securities to purchase additional securities of its own issue and the issue of securities pursuant to the exercise of the right if the issuer has given the Commission written notice stating the date, amount, nature and conditions of the proposed sale, including the approximate net proceeds to be derived by the issuer on the basis of such additional securities being fully taken up and paid for, and either,
 - a. the Commission has not informed the issuer in writing within ten days of the giving of the notice that it objects to the proposed trade, or
 - b. the issuer has delivered to the Commission information relating to the securities that is satisfactory to, and accepted by, the Commission, or

- (iv) in securities of its own issue or those of a reporting issuer held by it transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,

provided that, with respect to any trade referred to in subclause i or ii, no commission or other remuneration is paid or given to others in respect of such distribution except for ministerial or professional services or for services performed by a registered dealer;

- (g) the trade is made in a security of a company that is exchanged by or for the account of such company with another company or the holders of the securities of that other company in connection with,
 - (i) a statutory amalgamation or arrangement, or
 - (ii) a statutory procedure under which one company takes title to the assets of the other company which in turn loses its existence by operation of law, or under which the existing companies merge into a new company;
- (h) the trade is made in a security of a company that is exchanged by or for the account of the company with the security holders of another company in connection with a take-over bid as defined in Part XIX;
- (i) the trade is made in a security of an issuer in connection with a take-over bid exempted from the requirements of Part XIX by subsection 2 of section 90;
- (j) the trade is made by an issuer in a security of its own issue as consideration for a portion or all of the assets of any person or company, if the fair value of the assets so purchased is not less than \$100,000;
- (k) the trade is made by an issuer in a security of its own issue in consideration of mining claims where the vendor enters into such escrow or pooling agreement as the Director considers necessary;
- (l) the trade is made by an issuer in the securities of its own issue with its employees or the employees of an affiliate who are not induced to purchase by expectation of employment or continued employment;

- (m) the trade is made between an issuer in securities of its own issue and not more than twenty-five purchasers or is made between such purchasers if each of the following requirements is satisfied,
 - (i) each purchaser purchases as principal,
 - (ii) each purchaser,
 - a. is an investor who, by virtue of his net worth and investment experience or by virtue of consultation with or advice from a registered adviser, is able to evaluate the prospective investment on the basis of information respecting the investment presented to him by the issuer or has access to substantially the same information concerning the issuer that the filing of a prospectus under this Act would provide, or
 - b. is a senior officer or director of the issuer or his spouse, parent, brother, sister or child,
 - (iii) the offer and sale of the securities are not accompanied by an advertisement and no selling or promotional expenses have been paid or incurred in connection therewith, except for professional services or for services performed by a registered dealer,
 - (iv) solicitations in respect of the securities have not been made to more than fifty prospective purchasers, and
 - (v) there are not more than twenty-five beneficial owners of securities as a result of trades pursuant to this exemption;
- (n) the trade is made from one registered dealer to another registered dealer where the registered dealer making the purchase is acting as principal;
- (o) the trade is made between a person or company and an underwriter acting as purchaser or between or among underwriters; or
- (p) the trade is in a commodity futures option or commodity futures contract where such trade is a *bona fide* hedging transaction within the meaning of *The Commodity Futures Act, 1977*.

(2) For the purpose of subsection 1, a trust company registered under *The Loan and Trust Corporations Act* shall be deemed to be acting as principal when it trades as trustee for accounts fully managed by it. Trust companies deemed principals R.S.O. 1970, c. 254

(3) Where a trade has been made under clause *a, b, c, d, j, m* or *n* of subsection 1, the vendor shall within ten days file a report prepared and executed in accordance with the regulations. Report

(4) The first trade in securities acquired pursuant to an exemption contained in clause *a, b, c, d, j, k, m* or *n* of subsection 1, other than a further trade exempted by subsection 1, is a distribution, unless, First trades deemed distribution

(a) the issuer of the security is a reporting issuer and is not in default of any requirement of this Act or the regulations;

(b) (i) the securities are listed and posted for trading on a stock exchange recognized for this purpose by the Commission and comply with the requirements of either clause *m* or *n* of subsection 1 of section 383 of *The Insurance Act*, and have been held at least six months from the date of the initial exempt trade or the date the issuer became a reporting issuer, whichever is the later, or R.S.O. 1970, c. 224

(ii) the securities are bonds, debentures or other evidences of indebtedness issued or guaranteed by an issuer and comply with the requirements of clause *k* of subsection 1 of section 383 of *The Insurance Act* and have been held at least six months from the date of the initial exempt trade or the date the issuer became a reporting issuer, whichever is the later, or

(iii) the securities are listed and posted for trading on a stock exchange recognized for this purpose by the Commission or are bonds, debentures or other evidences of indebtedness issued or guaranteed by the reporting issuer whose securities are so listed, and have been held at least one year from the date of the initial exempt trade or the date the issuer became a reporting issuer, whichever is later, or

(iv) the securities have been held at least eighteen months from the date of the initial exempt trade or the date the issuer became a reporting issuer, whichever is later; and

- (c) the vendor files a report within ten days prepared and executed in accordance with the regulations,

provided that no unusual effort is made to prepare the market or to create a demand for such securities and no extraordinary commission or consideration is paid in respect of such trade.

Idem

(5) The first trade in securities acquired under an exemption contained in clause *f*, *g*, *h*, *i* or *l* of subsection 1 and the first trade in previously issued securities of a company that has ceased to be a private company, other than a further trade exempted by subsection 1, is a distribution unless,

- (a) the issuer of the securities is a reporting issuer and has been a reporting issuer for at least twelve months or, in the case of securities acquired under clause *g* of subsection 1, one of the amalgamating or merged corporations or one of the continuing corporations has been a reporting issuer for twelve months and the issuer is not in default of any requirement of this Act or the regulations;
- (b) the issuer has made disclosure of its exempt trade; and
- (c) no unusual effort is made to prepare the market or to create a demand for the securities and no extraordinary commission or consideration is paid in respect of the trade.

Idem

(6) The first trade in securities purchased under an exemption contained in clause *o* of subsection 1, other than a further trade exempted by subsection 1, is a distribution.

Prospectus
not
required

(7) Sections 54 and 63 do not apply to a distribution within the meaning of subparagraph iii of paragraph 12 of subsection 1 of section 1 or by a lender, pledgee, mortgagee or other encumbrancer for the purpose of liquidating a *bona fide* debt by selling or offering for sale a security pledged, mortgaged or otherwise encumbered in good faith as collateral for the debt in accordance with clause *e* of subsection 1, if,

- (a) the distribution is exempted by subsection 1; or
- (b) the issuer of the security is a reporting issuer and has been a reporting issuer for at least eighteen months and is not in default of any requirement of this Act or the regulations and the seller,

- (i) files with the Commission and any stock exchange recognized by the Commission for this purpose on which the securities are listed at least seven days and not more than fourteen days prior to the proposed trade,
 - a. a notice of intention to sell in the form prescribed by the regulations disclosing particulars of the control position known to him, the number of securities to be sold and the method of distribution, and
 - b. a declaration signed by each seller as at a date not more than twenty-four hours prior to its filing and prepared and executed in accordance with the regulations and certified as follows:

“The seller for whose account the securities to which this certificate relates are to be sold hereby represents that he has no knowledge of any material change which has occurred in the affairs of the issuer of the securities which has not been generally disclosed and reported to the Commission, nor has he any knowledge of any other material adverse information in regard to the current and prospective operations of the issuer which have not been generally disclosed”,

and,

- (ii) files within three days after the completion of any trade a report of the trade in the form prescribed under Part XX,

provided that the notice required to be filed under sub-subclause a of subclause i and the declaration required to be filed under sub-subclause b of subclause i shall be renewed and filed at the end of sixty days after the original date of filing and thereafter at the end of each twenty-eight day period so long as any of the securities specified under the original notice have not been sold or until notice has been filed that the securities so specified or any part thereof are no longer for sale; and

- (c) no unusual effort is made to prepare the market or to create a demand for the securities and no extraordinary commission or other consideration is paid in respect of such trade. *New.*

Certificate re
reporting
issuer

(8) Subject to subsection 10, for the purpose of determining whether an issuer is a reporting issuer and, if so, whether the reporting issuer is not in default of any requirement of this Act or the regulations, the seller is entitled to apply to the Commission for a certificate issued for this purpose in accordance with section 138 and is entitled to rely on the certificate.

List re
defaulting
reporting
issuers

(9) Subject to subsection 10, for the purpose of determining whether a reporting issuer is not in default of any requirement of this Act or the regulations, the seller is entitled to rely on a list of defaulting reporting issuers which shall be maintained by the Commission for public inspection in its offices during its normal business hours.

Exception

(10) No person or company who knows or ought reasonably to know that a reporting issuer is in default may rely on the certificate or on the list.

Reporting
issuers

(11) An issuer shall be deemed to have been a reporting issuer from the date that it met the condition of the appropriate subclause of paragraph 35 of subsection 1 of section 1 provided that in each case it is currently in compliance with the requirements of this Act and in the case of qualification under subclause iii of paragraph 35 of subsection 1 of section 1 it is also currently listed and posted for trading on any stock exchange in Ontario recognized by the Commission. *New.*

Prospectus
not
required

74.—(1) Sections 54 and 63 do not apply to a distribution of securities,

- (a) referred to in subsection 2 of section 35 excepting paragraphs 16 and 17 thereof;
- (b) that are listed and posted for trading on any stock exchange recognized for the purpose of this section by the Commission where the securities are distributed through the facilities of the stock exchange pursuant to the rules of the stock exchange and the requirements of the Commission, provided that a statement of material facts, which shall comply as to form and content with the regulations, is filed with and is accepted for filing by the stock exchange and the Commission;

- (c) that are options to sell or purchase securities known as puts and calls or any combination thereof which provide that the holder thereof may sell to or purchase from the writer of the option a specified amount of securities at a specific price, on or prior to a specified date or the occurrence of a specified event, provided,
 - (i) the option has been written by a member of an exchange recognized by the Commission for this purpose or the performance under the option is guaranteed by a member of an exchange recognized by the Commission for this purpose,
 - (ii) the securities that are the subject of the option are listed and posted for trading on an exchange recognized by the Commission for this purpose, and
 - (iii) the option is in the form from time to time prescribed by the regulations; or

(d) that are exempted by the regulations.

(2) Sections 72 and 129 apply *mutatis mutandis* to a distribution under clause *b* of subsection 1 as if sections 54 and 63 were applicable thereto, and the statement of material facts referred to in clause *b* of subsection 1 shall be deemed conclusively to be a prospectus for the purposes of sections 72 and 129. *New.* Application of ss. 72 and 129

75.—(1) The Commission may, upon the application of an interested person or company, rule that an intended trade is not subject to section 24 or 54 where it is satisfied that to do so would not be prejudicial to the public interest, and may impose such terms and conditions as are considered necessary. 1971, c. 31, s. 14, *part, amended.* Order exempting from registration a prospectus

(2) Where doubt exists whether a distribution of any security has been concluded or is currently in progress, the Commission may determine the question and rule accordingly. Determination of whether distribution has ceased

(3) A decision of the Commission under this section is final and there is no appeal therefrom. 1971, c. 31, s. 14, *part.* Ruling final

PART XVII

CONTINUOUS DISCLOSURE

Publication
of material
change

76.—(1) Subject to subsection 3, where a material change occurs in the affairs of a reporting issuer, it shall forthwith issue and file a press release authorized by a senior officer disclosing the nature and substance of such change.

Report of
material
change

(2) The reporting issuer shall file a report of such change in accordance with the regulations as soon as practicable and in any event within ten days of the date on which the change occurs.

Idem

(3) Where in the opinion of the reporting issuer, the disclosure required by subsections 1 and 2 would be unduly detrimental to the interests of the reporting issuer, it shall forthwith deliver to the Commission the report required under subsection 2 marked "confidential" together with written reasons for non-disclosure.

Idem

(4) Where a report has been delivered to the Commission under subsection 3, the reporting issuer shall advise the Commission in writing where it believes the report should continue to remain confidential within ten days of the date of delivery of the initial report and every ten days thereafter until the material change is generally disclosed. *New.*

Trading
where
undisclosed
change

77.—(1) No person or company shall purchase or sell securities of a reporting issuer with knowledge of a material change in the affairs of the reporting issuer that he or it knew or reasonably ought to have known had not been generally disclosed or inform another person or company about such material change other than in the necessary course of business before it has been so disclosed.

Exception

(2) No person or company shall be found to have contravened subsection 1 if the person or company proves that he or it did not make use of knowledge of the material change in purchasing or selling the securities.

Advising
trade

(3) No person shall advise another person or company to buy, sell, hold or exchange securities of the reporting issuer with knowledge of a material change in the affairs of the reporting issuer that he knew or ought reasonably to have known had not been generally disclosed. *New.*

Interim
financial
statement

78.—(1) Every reporting issuer that is not a mutual fund shall file within sixty days of the date to which it is made up an interim financial statement,

- (a) for the three-month period that commenced on the date of incorporation, organization or continuation, as the case may be, and for each of the two subsequent three-month periods during its first financial year, if the reporting issuer has not completed a financial year; or
- (b) for the three-month period of the current financial year that commenced immediately following the last financial year and for each of the two subsequent three-month periods during the current financial year, including a comparative statement for the corresponding three-month period in the last financial year, if the reporting issuer has completed a financial year,

made up and certified as required by the regulations and in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period, if any. R.S.O. 1970, c. 426, s. 130 (1), *amended*.

(2) Every reporting issuer that is a mutual fund shall ^{Idem} file within sixty days of the date to which it is made up an interim financial statement,

- (a) for the six-month period that commenced on the date of incorporation, organization or continuation, if the reporting issuer has not completed a financial year; or
- (b) for the six-month period that commenced immediately after the last financial year, if the reporting issuer has completed a financial year,

made up and certified by the regulations and in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period, if any. *New*.

79.—(1) Every reporting issuer that is not a mutual fund shall file annually within 140 days from the end of its last financial year comparative financial statements relating separately to, ^{Comparative financial statements}

- (a) the period that commenced on the date of incorporation, organization or continuation, as the case may be, and ended as of the close of the first financial year or, if the reporting issuer has com-

pleted a financial year, the last financial year, as the case may be; and

- (b) the period covered by the financial year next preceding the last financial year, if any,

made up and certified as required by the regulations and in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period, if any. R.S.O. 1970, c. 426, s. 120 (1), *amended*.

Annual
financial
statements

(2) Every reporting issuer that is a mutual fund shall file annually within 140 days from the end of its last financial year financial statements relating to the period that commenced on the date of incorporation, organization or continuation and ended as of the close of its first financial year or, if the reporting issuer has completed a financial year, the last financial year made up and certified as required by the regulations and in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period. *New*.

Auditor's
report

(3) Every financial statement referred to in subsections 1 and 2 shall be accompanied by a report of the auditor of the reporting issuer prepared in accordance with the regulations. R.S.O. 1970, c. 426, s. 119 (2), *amended*.

"auditor"
defined

(4) For the purposes of this Part, "auditor", where used in relation to the reporting issuer, includes the auditor of the reporting issuer and any other independent public accountant. *New*.

Auditor's
examination

80. The auditor of a reporting issuer shall make such examinations as will enable him to make the report required by subsection 3 of section 79. R.S.O. 1970, c. 426, s. 119 (1).

Relief
against
certain
require-
ment

81. Upon the application of a reporting issuer, the Commission may, where in the opinion of the Commission to do so would not be prejudicial to the public interest, make an order on such terms and conditions as the Commission may impose,

- (a) permitting the omission from the financial statements required to be filed under this Part of,

- (i) comparative financial statements for particular periods of time,

- (ii) sales or gross operating revenue where the Commission is satisfied that the disclosure of such information would be unduly detrimental to the interests of the reporting issuer, or
 - (iii) basic earnings per share or fully diluted earnings per share;
- (b) where, in the opinion of the Commission, the reporting issuer is unable to comply with the requirements of the regulations relating to the preparation of a statement of changes in financial position required under this Part and the regulations, permitting the reporting issuer to file in lieu thereof an alternative financial statement containing such information, if any, as the Commission considers appropriate;
- (c) exempting, in whole or in part, the reporting issuer from a requirement of this Part or the regulations relating to a requirement of this Part,
- (i) if such requirement conflicts with a requirement of the laws of the jurisdiction under which the reporting issuer is incorporated, organized or continued, or
 - (ii) if otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing. R.S.O. 1970, c. 426, s. 132 (1), *amended*.

82.—(1) Where the management of a reporting issuer is required to send an information circular under clause *a* of subsection 1 of section 87, the reporting issuer shall forthwith file a copy of such information circular certified in accordance with the regulations. ^{Filing of information circular}

(2) In any case where subsection 1 is not applicable, the reporting issuer shall file annually within 140 days from the end of its last financial year a report prepared and certified in accordance with the regulations. ^{Idem} *New*.

83. Where the laws of the jurisdiction in which the reporting issuer was incorporated, organized or continued require the reporting issuer to file substantially the same information in that jurisdiction as is required by this Part, the reporting issuer may comply with the filing requirements of this Part by filing copies of the press release, timely ^{Filing of documents filed in another jurisdiction}

disclosure report, information circular or financial statements and auditor's report, as the case may be, required by that jurisdiction provided such releases, reports, circulars or statements are manually signed or certified in accordance with the regulations. *New.*

Order
relieving
small
reporting
issuer

84. Upon the application of a reporting issuer that has fewer than fifteen security holders whose latest address as shown on the books of the reporting issuer is in Ontario, the Commission may order, subject to such terms and conditions as it may impose, that the reporting issuer shall be deemed to have ceased to be a reporting issuer where it is satisfied that to do so would not be prejudicial to the public interest. *New.*

PART XVIII

PROXIES AND PROXY SOLICITATION

Interpre-
tation

85. In this Part,

- (a) "information circular" means an information circular prepared in accordance with the regulations;
- (b) "solicit" and "solicitation" include,
 - (i) any request for a proxy whether or not accompanied by or included in a form of proxy,
 - (ii) any request to execute or not to execute a form of proxy or to revoke a proxy,
 - (iii) the sending or delivery of a form of proxy or other communication to a security holder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy,
 - (iv) the sending or delivery of a form of proxy to a security holder under section 86,
- but do not include,
 - (v) the sending or delivery of a form of proxy to a security holder in response to an unsolicited request made by him or on his behalf, or

- (vi) the performance by any person or company of ministerial acts or professional services on behalf of a person or company soliciting a proxy. R.S.O. 1970, c. 426, s. 101 (b, c), *amended*.

86. Subject to section 89, if the management of a reporting issuer gives or intends to give to holders of its voting securities notice of a meeting, the management shall, concurrently with or prior to giving the notice to the security holders whose latest address as shown on the books of the reporting issuer is in Ontario, send by prepaid mail to each such security holder who is entitled to vote at the meeting, at his latest address as shown on the books of the reporting issuer, a form of proxy for use at the meeting that complies with the regulations. R.S.O. 1970, c. 426, s. 102 (1), *amended*. Mandatory solicitation of proxies

87.—(1) Subject to subsection 2 and section 89, no person or company shall solicit proxies from holders of its voting securities whose latest address as shown on the books of the reporting issuer is in Ontario unless, Information circular

- (a) in the case of a solicitation by or on behalf of the management of a reporting issuer, an information circular, either as an appendix to or as a separate document accompanying the notice of the meeting, is sent by prepaid mail to each such security holder of the reporting issuer whose proxy is solicited at his latest address as shown on the books of the reporting issuer; or
- (b) in the case of any other solicitation, the person or company making the solicitation, concurrently with or prior thereto, delivers or sends an information circular to each such security holder whose proxy is solicited.

(2) Subsection 1 does not apply to,

Application of subs. 1

- (a) any solicitation, otherwise than by or on behalf of the management of a reporting issuer, where the total number of security holders whose proxies are solicited is not more than fifteen, two or more persons or companies who are the joint registered owners of one or more securities being counted as one security holder;
- (b) any solicitation by a person or company made under section 49; or

- (c) any solicitation by a person or company in respect of securities of which he is the beneficial owner. R.S.O. 1970, c. 426, s. 103 (1, 2), *amended*.

Voting
where
proxies

88. The chairman at a meeting has the right not to conduct a vote by way of ballot on any matter or group of matters in connection with which the form of proxy has provided a means whereby the person or company whose proxy is solicited may specify how such person or company wishes the securities registered in his name to be voted unless,

- (a) a poll is demanded by any security holder present at the meeting in person or represented thereat by proxy; or
- (b) proxies requiring that the securities represented thereby be voted against what would otherwise be the decision of the meeting in relation to such matters or group of matters total more than 5 per cent of all the voting rights attached to all the securities entitled to be voted and be represented at the meeting. R.S.O. 1970, c. 426, s. 106, *amended*.

Compliance
with laws
of other
jurisdiction

89.—(1) Where a reporting issuer is complying with the requirements of the laws of the jurisdiction under which it is incorporated, organized or continued and the requirements are substantially similar to the requirements of this Part, the requirements of this Part do not apply.

Exemption
by order

(2) Subject to subsection 1, upon the application of any interested person or company, the Commission may,

- (a) if a requirement of this Part conflicts with a requirement of the laws of the jurisdiction under which the reporting issuer is incorporated, organized or continued; or
- (b) if otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing,

make an order on such terms and conditions as seem to the Commission just and expedient exempting, in whole or in part, a person or company from the requirements of this Part. *New*.

PART XIX

TAKE-OVER BIDS AND ISSUER BIDS

Interpre-
tation

90.—(1) In this Part,

- (a) "day" means a clear day and a period of days shall be deemed to commence the day following the event which began the period and shall be deemed to terminate on midnight of the last day of the period except that if the last day of the period falls on a Sunday or holiday the period shall terminate on midnight of the day next following that is not a Sunday or holiday;
- (b) "directors' circular" means a directors' circular prepared in accordance with the regulations;
- (c) "issuer bid" means an offer made by an issuer to purchase, redeem or otherwise acquire any or all of a class of its securities;
- (d) "offeree" means a person or company to whom a take-over bid or an issuer bid is made and whose latest address as shown on the books of the offeree company is in Ontario;
- (e) "offeree company" means a company whose securities are the subject of a take-over bid;
- (f) "offeror" means a person or company other than an agent, who makes a take-over bid or an issuer bid and, in the case of a take-over bid, includes two or more persons or companies,
 - (i) whose take-over bids are made jointly or in concert, or
 - (ii) who intend to exercise jointly or in concert any voting rights attaching to the securities for which a take-over bid is made;
- (g) "offeror's presently-owned securities" means voting securities of an offeree company beneficially owned, directly or indirectly, on the date of a take-over bid by the offeror or an associate of the offeror;
- (h) "take-over bid" means an offer made to security holders the last address of any of whom as shown on the books of the offeree company is in Ontario to purchase, directly or indirectly, such number of voting securities of a company that, together with the offeror's presently-owned securities, will in the aggregate exceed 20 per cent of the outstanding voting securities of the company. R.S.O. 1970, c. 426, s. 81; 1971, c. 31, s. 22, *amended*.

(2) A take-over bid is exempted from the requirements of this Part where, Exempted
take-over
bids

- (a) it is made through the facilities of a stock exchange recognized by the Commission for the purpose of this Part according to the by-laws, regulations or policies of the stock exchange; or
- (b) it is an offer to purchase shares in a private company provided that the private company is not an insider of a reporting issuer. R.S.O. 1970, c. 426, s. 81; 1971, c. 31, s. 22, *amended*.

Exempted
issuer bid

(3) An issuer bid is exempted from the requirements of this Part where,

- (a) the securities are purchased, redeemed or retired in accordance with the terms and conditions agreed to at the time they were issued or subsequently varied by agreement with the security holders of that class;
- (b) the issuer bid is made through the facilities of a stock exchange recognized by the Commission for the purpose of this Part according to the by-laws, regulations or policies of the stock exchange;
- (c) following the publication of a notice of intention in the form and in the manner prescribed by the regulations, the issuer purchases by any method not more than 5 per cent in number or, in the case of debt securities, in value, of the issued securities of a class not held by or for the benefit of the issuer, in the preceding 30 days; or
- (d) the issuer bid is made by a private company. *New.*

Require-
ments for
take-over
and issuer
bids

91.—(1) The following provisions apply to every take-over bid and issuer bid:

1. The take-over bid or issuer bid shall be made to all holders of the securities sought, and, in the case of a take-over bid, to all holders of the voting securities, securities convertible into the voting securities and to all holders of warrants to purchase the voting securities, whose last address on the records of the offeree company or issuer is in Ontario.
2. The period of time in which securities may be deposited pursuant to a take-over bid or an issuer bid shall not be less than twenty-one days from the date thereof.
3. Any securities deposited pursuant to a take-over bid or an issuer bid shall not be taken up and paid for by the offeror until the expiration of ten days from its date.
4. Any securities deposited pursuant to a take-over bid or an issuer bid may be withdrawn by an offeree

at any time until the expiration of ten days from its date.

5. Notice of withdrawal of any securities pursuant to paragraph 4 shall be made in writing, including telegraphic communication, by the offeree or his agent and must be actually received by the depository.
6. Where a take-over bid or an issuer bid is made for less than all the securities owned by offerees, securities deposited pursuant thereto shall not be taken up and paid for by an offeror until the expiration of twenty-one days from its date.
7. Where a take-over bid or an issuer bid is made for less than all the securities owned by offerees, the period of time within which securities may be deposited pursuant to the take-over bid or an issuer bid, or any extension thereof, shall not exceed thirty-five days from the date of the take-over bid or an issuer bid.
8. Where a take-over bid or an issuer bid is made for less than all the securities owned by offerees, securities deposited pursuant to the take-over bid or an issuer bid shall be taken up and paid for, if all the terms and conditions thereof not waived by the offeror have been complied with, within fourteen days after the last day within which securities may be deposited thereto.
9. Where a take-over bid or an issuer bid is made for less than all the securities owned by offerees and where a greater number of securities is deposited pursuant thereto than the offeror is bound or willing to take up and pay for, the securities taken up by the offeror shall be taken up as nearly as may be *pro rata*, disregarding fractions, according to the number of securities deposited by each offeree.
10. In the case of a take-over bid, where the laws applicable to the company provide for a right of appraisal or acquisition, the offeror shall advise the offeree of his rights of appraisal and whether the offeror intends exercising any right of acquisition he may have.
11. The offeror shall not attach any conditions to the offer except, in the case of take-over bids, the right to withdraw the offer if,
 - (a) the offerees fail to tender the minimum number of securities the offeror is bound and willing to take up;

- (b) any undisclosed action prior to the date of the offer, or any action subsequent to such date, of the offeree company or of the directors or senior officers of the offeree company or by a person or company other than the offeror effects a material change in the affairs of the company; or
- (c) the required approval of a governmental or regulatory authority is not obtained prior to the expiration of the offer.

12. Where the take-over bid or issuer bid is made for all of the securities owned by offerees, the offeror shall, at the expiration of thirty-five days from the making of the offer, take up and pay for the securities tendered at that time or, in the case of a take-over bid, abandon his offer.

13. Where the take-over bid is subject to the approval of a governmental or regulatory authority, the time within which the offeree is bound to take up and make payment for the securities under paragraphs 9 and 13 may be extended for a period not exceeding an additional sixty days. R.S.O. 1970, c. 426, s. 82; 1971, c. 31, s. 23, *amended*.

Sale by
offeror
prohibited

(2) The offeror shall not sell any of the class of the securities that are the subject of the take-over bid during the period of the take-over bid.

Offer
increasing
take-over
bid or
issuer bid

(3) Where, during the course of a take-over bid or an issuer bid, the offeror pays or agrees to pay a price for securities higher than the consideration offered through the take-over bid or issuer bid, the take-over bid or issuer bid shall be deemed to be varied by increasing the consideration to the higher price. *New*.

Notice of
variation in
take-over
bid or
issuer bid

92.—(1) Where a take-over bid or an issuer bid has been varied by changing any of its terms, every person or company that has been sent the take-over bid circular or issuer bid circular shall be sent notice of the variation and the date of the take-over bid or issuer bid shall, for the purposes of section 91, be deemed to be the date of the variation.

Idem

(2) A notice of variation shall advise the offeree of his rights under paragraph 4 of subsection 1 of section 91. *New*.

Variation
of terms of
take-over
bid or
issuer bid

(3) Where the terms of a take-over bid or an issuer bid are varied before the expiration thereof by increasing the consideration offered for the securities, the offeror shall pay such increased consideration to each offeree whose securities are taken up and paid for pursuant to the take-over bid or issuer bid, whether or not such securities have been taken up by

the offeror before the variation of the take-over bid or issuer bid.

(4) Where a take-over bid for all the voting securities^{Idem} owned by offerees is converted, by amendments or otherwise, to a bid for less than all the voting securities owned by offerees, the take-over bid shall be deemed conclusively to be for less than all the voting securities owned by offerees. R.S.O. 1970, c. 426, s. 84, *amended*.

93. All holders of the same class of securities shall be paid the same price and no collateral agreement with any part of such holders shall have the effect, directly or indirectly, of offering such holders a price greater than the take-over bid price or issuer bid price for their securities. *New*.^{Premium prohibited}

94. A take-over bid, a varied take-over bid, an issuer bid or a varied issuer bid shall be sent by prepaid mail to the offerees and shall be deemed conclusively to have been dated as of the date on which it was mailed. R.S.O. 1970, c. 426, s. 83, *amended*.^{Sending by mail}

95. Where a take-over bid or an issuer bid provides that the consideration for the securities deposited pursuant thereto is to be paid in cash or partly in cash, the offeror shall make adequate arrangements to ensure that the required funds are available to effect payment in full for all securities owned by offerees that the offeror has offered to purchase pursuant to the take-over bid. R.S.O. 1970, c. 426, s. 85.^{Consideration in cash}

96.—(1) A take-over bid circular shall form part of or accompany a take-over bid.^{Take-over bid circular}

(2) Every take-over bid circular shall be in the form and shall contain the information prescribed by this Part and the regulations.^{Content}

(3) Where a take-over bid provides that the consideration for the securities of the offeree company is to be, in whole or in part, securities of an issuer, the take-over bid circular shall contain the additional information prescribed by the regulations. R.S.O. 1970, c. 426, s. 86, *amended*.^{Consideration in securities}

97.—(1) An issuer bid circular shall form part of or accompany an issuer bid.^{Issuer bid circular}

(2) Every issuer bid circular shall be in the form and shall contain the information prescribed by this Part and the regulations.^{Contents}

(3) Where an issuer bid provides that the consideration for the securities is to be, in whole or in part, other securities^{Consideration in securities}

of the issuer the issuer bid circular shall contain the additional information prescribed by the regulations. *New.*

Directors' circular

98.—(1) The board of directors of an offeree company shall send a directors' circular to each offeree not later than seven days from the date of the take-over bid prepared in accordance with the regulations. R.S.O. 1970, c. 426, s. 87 (1), *amended.*

Recommendation by board

(2) The board of directors may include in a directors' circular a recommendation to accept or to reject a take-over bid if it sees fit to do so. *New.*

Recommendation by individual director

(3) An individual director or officer may recommend to the offerees acceptance or rejection of the take-over bid made to such offerees if the director or officer sends to each offeree with his communication a circular prepared in accordance with the regulations. R.S.O. 1970, c. 426, s. 87 (4), *amended.*

Advising of consideration

(4) Where a board of directors is considering recommending acceptance or rejection of a take-over bid, it shall, at the time of sending a director's circular, advise the offerees of this fact and shall advise them not to tender their securities until further communication is received from the directors. R.S.O. 1970, c. 426, s. 87 (2), *amended.*

Advising of decision of directors

(5) Where the board of directors sends a communication under subsection 4, it shall communicate the recommendation or the decision not to make a recommendation to the offerees at least seven days prior to the expiry of the offer. R.S.O. 1970, c. 426, s. 87 (3), *amended.*

Service

(6) All communications required or permitted by this section shall be sent to each offeree by prepaid mail to his latest address as shown on the books of the offeree company. R.S.O. 1970, c. 426, s. 87 (5).

Circulation of recommendation of individual director

(7) Where an individual director or officer submits a recommendation prepared in accordance with subsection 3 to the board of directors prior to the board of directors sending the directors' circular required by subsection 1, or the further communication permitted by subsection 5, the board of directors shall send a copy of the recommendation of the individual director or officer to the offerees together with the circular or further communication. *New.*

Approval of circulars

99.—(1) Where a take-over bid is made by or on behalf of an issuer, the contents of the take-over bid circular shall be approved and the delivery thereof authorized

by the directors of the issuer. R.S.O. 1970, c. 426, s. 89 (1), *amended*.

(2) Where a take-over bid is made by or on behalf ^{Idem} of an issuer, the take-over bid circular shall contain a statement that the contents thereof have been approved and the delivery thereof authorized by the directors of the issuer. R.S.O. 1970, c. 426, s. 93.

(3) The contents of a directors' circular shall be ap- ^{Idem} proved and the delivery thereof authorized by the directors of the offeree company. R.S.O. 1970, c. 426, s. 89 (2), *amended*.

100. The issuer bid circular shall be approved and the ^{Idem} delivery thereof authorized by the directors of the issuer. *New*.

101. Upon an application by a person or company, the ^{Deeming offers exempt} Commission may exempt, subject to such terms and conditions as it may impose, the person or company from any requirement of this Part where in its opinion it would not be prejudicial to the public interest to do so. R.S.O. 1970, c. 426, s. 90, *amended*.

102. The identity of the offeror shall be disclosed in a take- ^{Naming of offeror} over bid circular. 1971, c. 31, s. 27, *amended*.

PART XX

INSIDER TRADING AND SELF-DEALING

103.—(1) In this Part, <sup>Interpre-
tation</sup>

- (a) "mutual fund" means a mutual fund that is a reporting issuer;
- (b) "related mutual funds" includes more than one mutual fund under common management;
- (c) "related person or company" in relation to a mutual fund means a person in whom, or a company in which, the mutual fund, its management company and its distribution company are prohibited by the provisions of this Part from making any investment.

(2) For the purpose of this Part, ^{Idem}

- (a) any issuer in which a mutual fund holds in excess of 10 per cent of the voting securities or in which the

mutual fund and related mutual funds hold in excess of 20 per cent of the voting securities shall be deemed to be a related person or company of that mutual fund or of each of those mutual funds;

- (b) the acquisition or disposition by an insider of a put, call or other transferable option with respect to a security shall be deemed a change in the beneficial ownership of the security to which such put, call or other transferable option relates; and
- (c) for the purpose of reporting under section 104 or 105, ownership shall be deemed to pass at such time as an offer to sell is accepted by the purchaser or his agent or an offer to buy is accepted by the vendor or his agent. R.S.O. 1970, c. 426, s. 109, *amended*.

Report

104.—(1) A person or company who becomes an insider of a reporting issuer, other than a mutual fund, shall, within ten days after the end of the month in which he becomes an insider, file a report as of the day on which he became an insider disclosing any direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer as may be required by the regulations.

Idem

(2) A person or company who has filed or is required to file a report under this section or any predecessor thereof and whose direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer changes from that shown or required to be shown in the report or in the latest report filed by him under this section or any predecessor thereof shall, within ten days following the end of the month in which the change takes place, if he was an insider of the reporting issuer at any time during such month, file a report of his direct or indirect beneficial ownership of or his control or direction over securities of the reporting issuer at the end of the month and the change or changes therein that occurred during said month giving such details of each transaction as may be required by the regulations. R.S.O. 1970, c. 426, s. 110 (1, 2), *amended*.

Idem

(3) A person or company who becomes an insider of a reporting issuer by reason of subsection 8 or 9 of section 1 shall file the reports required by subsections 1 and 2 of this section for the previous six months or such shorter period that he was a director or officer of the reporting issuer within ten days after the end of the month that the issuer became an insider of a reporting issuer or the reporting issuer became

an insider of another reporting issuer as the case may be.
New.

105.—(1) Where a person or company becomes the beneficial owner, directly or indirectly, of voting securities of a reporting issuer carrying 20 per cent or more of the voting rights attached to all voting securities for the time being outstanding, through purchases effected through a take-over bid or issuer bid exempted from the requirements of Part XIX by subsection 2 or subsection 3 of section 90, such person or company shall file a report as of the day on which he acquired the ownership within three days of acquiring such 20 per cent ownership. ^{Report of offeror}

(2) A person or company who is the beneficial owner, ^{Idem} directly or indirectly, of voting securities of a reporting issuer carrying 20 per cent or more of the voting rights attached to all voting securities for the time being outstanding shall, within three days of purchasing further voting securities carrying an additional 5 per cent of the voting rights, file a report as of the day on which he acquired an additional 5 per cent of the voting rights and thereafter each time he acquires a further 5 per cent.

(3) Where the facts required to be reported by this section are identical to those required under section 104, a separate report under section 104 is not required. 1971, c. 31, s. 33, *amended*. ^{Idem}

106. No insider of a reporting issuer shall transfer or cause to be transferred any securities of the reporting issuer into the name of an agent, nominee or custodian without delivering to the Commission a report of such transfer in accordance with the regulations except for a transfer for the purpose of giving collateral for a *bona fide* debt. *New.* ^{Report of transfer by insider}

107. Where voting securities are registered in the name of a person or company other than the beneficial owner and the person or company knows or ought to know after reasonable inquiry that they are beneficially owned by an insider he shall file a report in accordance with the regulations except where the transfer was for the purpose of giving collateral for a *bona fide* debt or the insider has reported and remains the beneficial owner of the securities. *New.* ^{Report of transfer by insider}

108. For the purposes of sections 109, 110, 111, 112, 113 and 114, ^{Interpretation}

- (a) “investment” means a purchase of any security of any class of securities of an issuer including bonds, debentures, notes, or other evidences of indebted-

ness thereof, and a loan to persons or companies but does not include an advance or loan, whether secured or unsecured, that is made by a mutual fund, its management company or its distribution company that is merely ancillary to the main business of the mutual fund, its management company or its distribution company;

- (b) a person or company or a group of persons or companies has a significant interest in an issuer, if,
 - (i) in the case of a person or company, he or it, as the case may be, owns beneficially, either directly or indirectly, more than 10 per cent, or
 - (ii) in the case of a group of persons or companies, they own beneficially, either individually or together and either directly or indirectly, more than 50 per cent,

of the outstanding shares or units of the issuer;

- (c) a person or company or a group of persons or companies is a substantial security holder of an issuer if that person or company or group of persons or companies owns beneficially, either individually or together or directly or indirectly, voting securities to which are attached more than 20 per cent of the voting rights attached to all the voting securities of the issuer for the time being outstanding, but in computing the percentage of voting rights attached to voting securities owned by an underwriter, there shall be excluded any voting securities acquired by him as underwriter in a distribution of such securities but such exclusion ceases to have effect on completion or cessation of the distribution by him;
- (d) where a person or company or group of persons or companies owns beneficially, directly or indirectly, or pursuant to this clause is deemed to own beneficially, voting securities of an issuer, that person or company or group of persons or companies shall be deemed to own beneficially a proportion of voting securities of any other issuer that are owned beneficially, directly or indirectly, by the first mentioned issuer, which proportion shall equal the proportion of the voting securities

of the first mentioned issuer that are owned beneficially, directly or indirectly, or that pursuant to this clause are deemed to be owned beneficially, by that person or company or group of persons or companies. *New.*

109.—(1) No mutual fund shall knowingly make an investment by way of loan to, Loans of mutual funds

(a) any officer or director of the mutual fund, its management company or distribution company or an associate of any of them;

(b) any individual, where the individual or an associate of the individual is a substantial security holder of the mutual fund, its management company or distribution company.

(2) No management company or distribution company of a mutual fund shall knowingly make an investment by way of loan to, Loans of management or distribution companies

(a) any officer or director of the mutual fund or an associate of any of them; or

(b) any individual, where the individual or associate of the individual is a substantial security holder of the mutual fund.

(3) No mutual fund, its management company or distribution company shall knowingly make an investment, Investments of mutual funds, etc.

(a) in any person or company who is a substantial security holder of the mutual fund, its management company or distribution company;

(b) in any person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder; or

(c) in an issuer in which,

(i) any officer or director of the mutual fund, its management company or distribution company or an associate of any of them, or

(ii) any person or company who is a substantial security holder of the mutual fund, its management company or its distribution company,

has a significant interest.

Divesting of
prohibited
loans and
investments

(4) No mutual fund or its management company or its distribution company shall knowingly hold an investment made after the coming into force of this Act that is an investment described in this section. *New.*

Limitation
on mutual
fund
investment

110.—(1) Subject to subsection 2, no mutual fund shall purchase securities of any class of an issuer if after the purchase,

- (a) the holdings of the mutual fund exceed 10 per cent of the outstanding securities of that class by number or the holdings of the mutual fund and of related mutual funds exceed 20 per cent of the outstanding securities of that class by number or, in the case of debt securities maturing more than one year from the date of issue, holdings of the mutual fund exceed 10 per cent of the principal amount of the total outstanding debt securities of the issuer or the holdings of the mutual fund and of related mutual funds exceed 20 per cent out of the principal amount of the total outstanding debt securities of the issuer; or
- (b) the holdings of the mutual fund of all of the securities of the issuer exceed 10 per cent by value of the net asset value of such mutual fund.

Exception

(2) A mutual fund may purchase securities in excess of the limits in subsection 1 if the security is,

- (a) a mortgage upon real property, other than a mortgage contained in or secured by a bond, debenture or similar obligation in a trust deed or other instrument to secure bonds or debentures or similar obligations; or
- (b) negotiable promissory notes or other money market instruments maturing not more than six months from the date of issue. *New.*

Indirect
investment

111. No mutual fund or its management company or its distribution company shall knowingly enter into any contract or other arrangement that results in its being directly or indirectly liable or contingently liable in respect of any investment by way of loan to, or other investment in, a person or company to whom it is by section 109 prohibited from making a loan or in which it is prohibited from making any other investment, and for the purpose of section 109 any such contract or other arrangement shall be deemed to be a loan or an investment, as the case may be. *New.*

112. Upon an application of an interested person or company, the Commission may, where it is satisfied, ^{Relieving orders}

- (a) that a class of investment or a particular investment represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of a mutual fund; or
- (b) that a particular investment is in fact in the best interests of a mutual fund,

order, subject to such terms and conditions as it may impose, that section 109, 110 or 111 does not apply to the class of investment, particular investment, contract or other arrangement, as the case may be. *New.*

113. Notwithstanding clause *d* of section 108, a mutual fund, its management company or its distribution company is not prohibited from making an investment in an issuer only because a person or company or a group of persons or companies who own beneficially, directly or indirectly, or are deemed to own beneficially, voting securities of the mutual fund or its management company or its distribution company are by reason thereof deemed to own beneficially voting securities of the issuer. *New.* ^{Exception to s. 108 (d)}

114.—(1) No mutual fund shall make any investment in consequence of which a related person or company of the mutual fund will receive any fee or other compensation except fees paid pursuant to a contract which is disclosed in any preliminary prospectus or prospectus, or any amendment to either of them, that is filed by the mutual fund and is accepted by the Director. ^{Fees on investment}

(2) The Commission may, upon the application of a mutual fund and where it is satisfied that it would not be prejudicial to the public interest to do so, order, subject to such terms and conditions as it may impose, that subsection 1 does not apply to the mutual fund. *New.* ^{Relieving orders}

115.—(1) Every person or company responsible for the management of a mutual fund shall exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the mutual fund, and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. ^{Standard of care for management of mutual fund}

(2) For the purposes of subsection 1, a person or company is responsible for the management of a mutual fund if he ^{Idem}

has legal power or right to control the mutual fund or if in fact he is able to do so. *New.*

Filing by
management
companies

116.—(1) Every management company shall file a report prepared in accordance with the regulations of,

- (a) every transaction of purchase or sale of securities between the mutual fund and any related person or company;
- (b) every loan received by the mutual fund from, or made by the mutual fund to, any of its related persons or companies;
- (c) every purchase or sale effected by the mutual fund through any related person or company with respect to which the related person or company received a fee either from the mutual fund or from the other party to the transaction or from both; and
- (d) any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies,

in respect of each mutual fund to which it provides services or advice, within thirty days after the end of the month in which it occurs.

Relieving
orders

(2) The Commission may, upon the application of the management company of a mutual fund and where it is of the opinion that it would not be prejudicial to the public interest to do so, order, subject to such terms and conditions as it may impose, that subsection 1 does not apply to any transaction or class of transactions. *New.*

"Responsible
person"
defined

117.—(1) In this section, "responsible person" means a portfolio manager and every individual who is a partner, director or officer of a portfolio manager together with every affiliate of a portfolio manager and every individual who is a director, officer or employee of such affiliate or who is an employee of the portfolio manager, if the affiliate or the individual participates in the formulation of, or has access prior to implementation to investment decisions made on behalf of or the advice given to the client of the portfolio manager.

Interest of
manager in
investment
portfolio

(2) The portfolio manager shall not knowingly cause any investment portfolio managed by it to,

- (a) invest in any issuer in which a responsible person or an associate of a responsible person is an officer or director unless the specific fact is disclosed to the client and the written consent of the client to the investment is obtained before the purchase;
 - (b) purchase or sell the securities of any issuer from or to the account of a responsible person, any associate of a responsible person or the portfolio manager; or
 - (c) make a loan to a responsible person or an associate of a responsible person or the portfolio manager.
- New.*

118. No person or company who has access to information concerning the investment program of a mutual fund or the investment portfolio managed for a client by a portfolio manager shall purchase or sell securities of an issuer for his or its account where the portfolio securities of the mutual fund or the investment portfolio managed for a client by a portfolio manager include securities of that issuer and where the information is used by the person or company for his or its direct benefit or advantage. *New.*

Trades by
mutual
fund
insiders

119. The Commission shall summarize in or as a part of a monthly periodical available to the public on payment of a reasonable fee the information contained in every report filed in compliance with this Part. R.S.O. 1970, c. 426, s. 111 (2).

Publication
of summaries
of reports

120.—(1) Where the laws of the jurisdiction in which the reporting issuer is incorporated, organized or continued require substantially the same reports in that jurisdiction as are required by this Part, the filing requirements of this Part may be complied with by filing the reports required by the laws of such jurisdiction manually signed or certified in accordance with the regulations. *New.*

Filing
in other
jurisdiction

(2) Subject to subsection 1, upon the application of an interested person or company, the Commission may,

Exemptions
by order of
Commission

- (a) if a requirement of this Part conflicts with a requirement of the laws of the jurisdiction under which the reporting issuer is incorporated, organized or continued; or
- (b) if otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing,

make an order on such terms and conditions as seem to the Commission just and expedient, exempting in whole or in part, a person or company from the requirements of this Part. R.S.O. 1970, c. 426, s. 116 (1), *amended*.

PART XXI

ENFORCEMENT

Offences,
general

121.—(1) Every person or company who,

- (a) makes a statement in any material, evidence or information submitted or given under this Act or the regulations to the Commission, its representative, the Director or any person appointed to make an investigation or audit under this Act that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;
- (b) makes a statement in any application, release, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular or other document required to be filed or furnished under this Act or the regulations that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;
- (c) contravenes this Act or the regulations; or
- (d) fails to observe or to comply with any direction, decision, ruling, order or other requirement made under this Act or the regulations,

is guilty of an offence and on summary conviction is liable, in the case of a person, other than an individual, or company, to a fine of not more than \$25,000 and, in the case of an individual, to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

Defence

(2) No person or company is guilty of an offence under clause *a* or *b* of subsection 1 if he or it, as the case may be, did not know and in the exercise of reasonable diligence could not have known that the statement was a misrepresentation.

Directors
and
officers

(3) Where a company or a person other than an individual is guilty of an offence under subsection 1, every director or

officer of such company or person who authorized, permitted, or acquiesced in such offence is also guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year. R.S.O. 1970, c. 426, s. 137 (1-3), *amended*.

122. No proceedings under section 121 shall be instituted ^{Consent of Minister} except with the consent or under the direction of the Minister. R.S.O. 1970, c. 426, s. 138 (1).

123. An information in respect of any contravention of this ^{Information containing more than one offence} Act may be for one or more offences, and no information, summons, warrant, conviction or other proceeding in any prosecution is objectionable or insufficient by reason of the fact that it relates to two or more offences. R.S.O. 1970, c. 426, s. 139.

124.—(1) Where a provincial judge, magistrate or justice ^{Execution of warrant issued in another province} of another province or territory of Canada issues a warrant for the arrest of any person on a charge of contravening any provision of a statute of such province or territory similar to this Act, any provincial judge or justice of Ontario within whose jurisdiction that person is or is suspected to be, may, upon satisfactory proof of the handwriting of the provincial judge, magistrate or a justice who issued the warrant, make an endorsement thereon in the form prescribed by the regulations, and a warrant so endorsed is sufficient authority to the person bringing the warrant and to all other persons to whom it was originally directed and to all constables within the territorial jurisdiction of the provincial judge or justice so endorsing the warrant to execute it within that jurisdiction and to take the person arrested thereunder either out of or anywhere in Ontario and to rearrest such person anywhere in Ontario.

(2) Any constable of Ontario or of any other province or ^{Prisoner in transit} territory of Canada who is passing through Ontario having in his custody a person arrested in another province or territory under a warrant endorsed under subsection 1 is entitled to hold, take and rearrest the accused anywhere in Ontario under such warrant without proof of the warrant or the endorsement thereof. R.S.O. 1970, c. 426, s. 149.

125.—(1) Where it appears to the Commission that any ^{Order for compliance} person or company has failed to comply with or is violating any decision or any provision of this Act or the regulations, the Commission may, notwithstanding the imposition of any penalty in respect of such non-compliance or violation and in addition to any other rights it may have, apply to a judge of the High Court for an order,

- (a) directing the person or company to comply with the decision or provision or restraining the person or company from violating the decision or provision; and
- (b) directing the directors and senior officers of the person or company to cause the person or company to comply with or to cease violating the decision or provision,

and upon the application the judge may make such order, or such other order as he thinks fit.

Appeal

(2) An appeal lies to the Supreme Court from an order made under subsection 1. R.S.O. 1970, c. 426, s. 143, *amended*.

Order
to cease
trading

126.—(1) The Commission may, where in its opinion such action is in the public interest, order, subject to such terms and conditions as it may impose, that trading shall cease in respect of any securities for such period as is specified in the order. R.S.O. 1970, c. 426, s. 144 (1).

Idem

(2) The Commission may issue a cease trading order under subsection 1 notwithstanding the delivery of a report to it pursuant to subsection 3 of section 76. *New*.

Temporary
order

(3) No order shall be made under subsection 1 or 2 without a hearing unless in the opinion of the Commission the length of time required for a hearing could be prejudicial to the public interest, in which event the Commission may make a temporary order, which shall not be for longer than fifteen days from the date of the making thereof, but the order may be extended for such period as the Commission considers necessary where satisfactory information is not provided to the Commission within the fifteen day period. R.S.O. 1970, c. 426, s. 144 (2), *amended*.

Commission's
discretion to
remove
exemptions

127.—(1) The Commission may, where in its opinion such action is in the public interest, order, subject to such terms and conditions as it may impose, that any or all of the exemptions contained in sections 35, 73 and 74 do not apply to the person or company named in the order.

Temporary
order and
hearing

(2) No order shall be made under subsection 1 without a hearing unless in the opinion of the Commission the length of time required for a hearing could be prejudicial to the public interest, in which event a temporary order may be made which shall not be for longer than fifteen days from the date of the making thereof unless the hearing is com-

menced in which case the Commission may extend the order until the hearing is concluded.

(3) Notice of a temporary order made under subsection 2 ^{Notice} shall be given forthwith together with the notice of the hearing under subsection 2 to every person or company who in the opinion of the Commission is directly affected thereby. R.S.O. 1970, c. 426, s. 19 (5-7), *amended*.

128.—(1) No proceedings under this Part shall be commenced in a court more than one year after the facts upon which the proceedings are based first came to the knowledge of the Commission. ^{Limitation period}

(2) No proceedings under this Act shall be commenced ^{Idem} before the Commission more than two years after the facts upon which the proceedings are based first came to the knowledge of the Commission. R.S.O. 1970, c. 426, s. 138 (2, 3), *amended*.

PART XXII

CIVIL LIABILITY

129.—(1) Where a prospectus together with any amendment to the prospectus contains a misrepresentation, a purchaser who purchases a security offered thereby shall be deemed to have relied on such misrepresentation and has a right of action for rescission or damages against, ^{Liability for misrepresentation in prospectus}

- (a) the issuer or selling security holder;
- (b) each underwriter of the securities who is required to sign the certificate required by section 60;
- (c) every director of the issuer at the time the prospectus or the amendment to the prospectus was filed;
- (d) every person or company whose consent has been filed pursuant to a requirement of the regulations but only with respect to statements or reports that have been made by them; and
- (e) every person or company who signed the prospectus or the amendment to the prospectus other than the persons or companies included in clauses *a* to *d*.

(2) No person or company is liable under subsection 1 if ^{Defence} he proves that the purchaser purchased the securities with knowledge of the misrepresentation.

Idem

(3) No person or company, other than the issuer or selling security holder, is liable under subsection 1 if he proves,

- (a) that the prospectus or the amendment to the prospectus was filed without his knowledge or consent, and that, on becoming aware of its filing, he forthwith gave reasonable general notice that it was so filed;
- (b) that, after the issue of a receipt for the prospectus and before the purchase of the securities by the purchaser, on becoming aware of any misrepresentation in the prospectus or an amendment to the prospectus he withdrew his consent thereto and gave reasonable general notice of such withdrawal and the reason therefor;
- (c) that, with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on the authority of an expert or purporting to be a copy of an extract of a report or evaluation of an expert, he had no reasonable grounds to believe and did not believe that there had been a misrepresentation or that such part of the prospectus or the amendment to the prospectus did not fairly represent the statement of the expert or was not a fair copy of the extract from the report or evaluation of the expert; or
- (d) that, with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on his own authority as an expert or purporting to be a copy of an extract from his own report or evaluation as an expert, he had, after reasonable investigation, reasonable grounds to believe and did believe that there had been no misrepresentation or that such part of the prospectus or the amendment to the prospectus did not fairly represent his statement as an expert or was not a fair copy of or extract from his report or evaluation as an expert and on becoming aware of such use of his statement or report or evaluation he forthwith advised the Commission and gave reasonable general notice that such use had been made and that he would not be responsible for that part of the prospectus or the amendment to the prospectus.

Idem

(4) No person or company, other than the issuer, is liable under subsection 1 if he proves that, with respect to any part of the prospectus or the amendment to the prospectus not purporting to be made on the authority of an expert and not purporting to be a copy of an extract of a report or evaluation

of an expert, he had, after reasonable investigation, reasonable grounds to believe and did believe that there was no misrepresentation.

(5) No underwriter is liable for more than the total public offering price represented by the portion of the distribution underwritten by him. Limitation re underwriters

(6) In an action for damages pursuant to subsection 1, the defendant is not liable for all or any portion of such damages that he proves do not represent the depreciation in value of the security as a result of the misrepresentation relied upon. Limitation in action for damages

(7) All or any one or more of the persons or companies specified in subsection 1 are jointly and severally liable, and every person or company who becomes liable to make any payment under this section may recover a contribution from any person or company who, if sued separately, would have been liable to make the same payment. Joint and several liability

(8) In no case shall the amount recoverable under this section exceed the price at which the securities were offered to the public. Limitation re amount recoverable

(9) The right of action for rescission or damages conferred by this section is in addition to and without derogation from any other right the purchaser may have at law. R.S.O. 1970, c. 426, s. 142, *amended*. No derogation of rights

130.—(1) Where a take-over bid circular sent to the offerees of an offeree company as required by Part XIX contains a misrepresentation, every such offeree shall be deemed to have relied on such misrepresentation and has a right of action for rescission or damages against, Liability for misrepresentation in circular

- (a) the offeror;
- (b) every person who at the time the circular was signed was a director of the offeror; and
- (c) each person who signed a certificate in a circular other than the persons included in clause *b*.

(2) Where a directors' circular or a director's or officer's circular sent to the offerees of an offeree company as required by Part XIX contains a misrepresentation, every such offeree shall be deemed to have relied on such misrepresentation and has a right of action for damages against every director or officer who signed the circular. Idem

- Idem (3) The provisions of subsection 1 apply *mutatis mutandis* where an issuer bid circular contains a misrepresentation.
- Defence (4) No person or company is liable under subsection 1, 2 or 3 if he proves that the offeree had knowledge of the misrepresentation.
- Idem (5) No person or company, other than the offeror, is liable under subsection 1, 2 or 3 if he proves,
- (a) that the take-over bid circular, issuer bid circular, directors' circular or director's or officer's circular, as the case may be, was sent without his knowledge or consent and that, on becoming aware of it, he forthwith gave reasonable general notice that it was so sent;
 - (b) that, after the sending of the take-over bid circular, issuer bid circular, directors' circular or director's or officer's circular, as the case may be, on becoming aware of any misrepresentation in the take-over bid circular, issuer bid circular, directors' circular or director's or officer's circular, he withdrew his consent thereto and gave reasonable general notice of the withdrawal and the reason therefor;
 - (c) that, with respect to every misrepresentation, he had, after reasonable investigation, reasonable grounds to believe and did believe the statement was true and that there was no omission to state a material fact;
 - (d) that, with respect to any part of the circular purporting to be a copy of an extract from a report, opinion, or statement of an expert, he had no reasonable grounds to believe and did not believe that there had been a misrepresentation or that such part of the circular did not fairly represent the report, opinion, or statement of the expert or was not a fair copy of an extract from the report, opinion or statement of the expert; or
 - (e) that, with respect to any part of the circular purporting to be made on his own authority as an expert or purporting to be a copy of an extract from his own report, opinion or statement as an expert, he had, after reasonable investigation, reasonable grounds to believe and did believe that there had been no misrepresentation, or that such part of the circular did not fairly represent his report, opinion or statement as an expert or was not a fair copy of or extract from his report, opinion or statement, and on becoming aware of such use of his

report, opinion or statement, he forthwith advised the Commission and gave reasonable general notice that such use had been made and that he would not be responsible for that part of the circular.

(5) The right of action for rescission or damages conferred by this section is in addition to and without derogation from any other right the offeree may have at law. 1971, c. 31, ss. 29, 45, *amended*. No derogation of rights

131. In determining what constitutes reasonable investigation or reasonable grounds for belief for the purposes of subsection 4 of section 129 and clause *c* of subsection 4 of section 130, the standard of reasonableness shall be that required of a prudent man in the circumstances of the particular case. *New*. Standard of reasonableness

132. A person or company who trades in a security in violation of section 54, 66, 72, subsection 4, 5 or 7 of section 73 or section 96 is liable to his purchaser or offeree for rescission or damages. R.S.O. 1970, c. 426, s. 65; 1971, c. 31, s. 20, *amended*. Liability for unlawful trade

133.—(1) Every person or company who sells or purchases the securities of a reporting issuer with knowledge of a material change with respect to the reporting issuer that has not been generally disclosed and every person who informs the vendor or purchaser of the material change and every person who directly or indirectly provides the information is liable to compensate the purchaser or vendor of the securities for damages as a result of the trade unless, Liability where material change undisclosed

- (a) the person or company had reasonable grounds to believe that the material change had been generally disclosed;
- (b) the material change was known or ought reasonably to have been known to the purchaser or vendor; or
- (c) the person or company proves that he did not make use of knowledge of the material change in purchasing or selling the securities.

(2) Any person or company who has access to information concerning the investment program of a mutual fund that is a reporting issuer or the investment portfolio managed for a client by a portfolio manager and uses that information for his or its direct benefit or advantage to purchase or sell securities of an issuer for his or its account where the portfolio securities of the mutual fund or the investment portfolio managed for the client by a portfolio manager include securi- Idem

ties of that issuer is accountable to the mutual fund or the client of the portfolio manager, as the case may be, for any benefit or advantage received or receivable as a result of such purchase or sale.

Account-
ability for
gain

(3) Every person or company referred to in subsection 1 who is also an insider of the reporting issuer, or an associate or affiliate of such insider, is, in addition to the liability imposed by subsection 1, accountable to the reporting issuer for any benefit or advantage received or receivable by the insider or associate or affiliate. R.S.O. 1970, c. 426, s. 65; 1971, c. 31, s. 20, *amended*.

Liability
joint and
several

(4) The liability of the vendor or purchaser and any informer under subsection 1 is joint and several.

Measure of
damages

(5) The measure of damages under subsection 1 is,

- (a) if the plaintiff is a purchaser, the price that he paid for the security less the average market price of the security in the sixty-day trading period following general disclosure of the material change; and
- (b) if the plaintiff is a vendor, the average market price of the security in the sixty-day trading period following general disclosure of the material change less the price that he received for the security.

Action by
Commission
on behalf
of issuer

134.—(1) Upon application by the Commission or by any person or company who was at the time of a transaction referred to in subsection 1 of section 133 or is at the time of the application a security holder of the reporting issuer, a judge of the High Court may, if satisfied that,

- (a) the Commission or the person or company has reasonable grounds for believing that the reporting issuer has a cause of action under subsection 3 of section 133; and
- (b) either,
 - (i) the reporting issuer has refused or failed to commence an action under section 133 within sixty days after receipt of a written request from the Commission or such person or company so to do, or

- (ii) the reporting issuer has failed to prosecute diligently an action commenced by it under section 133,

make an order, upon such terms as to security for costs and otherwise as to the Judge seems fit, requiring the Commission or authorizing such person or company or the Commission to commence or continue an action in the name of and on behalf of the reporting issuer to enforce the liability created by subsection 3 of section 133.

(2) Upon the application by the Commission or any person or company who was at the time of a transaction referred to in subsection 2 of section 133 or is at the time of the application a security holder of the mutual fund, a judge of the High Court may, if satisfied that, Action by Commission on behalf of mutual fund

- (a) the Commission or the person or company has reasonable grounds for believing that the mutual fund has a cause of action under subsection 2 of section 133; and

(b) the mutual fund has either,

- (i) refused or failed to commence an action under subsection 2 of section 133 within sixty days after receipt of a written request from the Commission or the person or company so to do, or
- (ii) failed to prosecute diligently an action commenced by it under subsection 2 of section 133,

make an order, upon terms as to security for costs or otherwise as to the judge seems proper, requiring the Commission or authorizing the person or company or the Commission to commence and prosecute or to continue an action in the name of and on behalf of the mutual fund to enforce the liability created by subsection 2 of section 133.

(3) Where an action under subsection 2 or 3 of section 133 is, Costs

- (a) commenced;
- (b) commenced and prosecuted; or
- (c) continued,

by a board of directors of a reporting issuer, the trial judge or a judge of the High Court may order that the costs properly incurred by the board of directors in commencing, commencing and prosecuting or continuing the action, as the case may be, shall be paid by the reporting issuer, if he is satisfied that the action was *prima facie* in the best interests of the reporting issuer and the security holders thereof.

Action by
Commission
on behalf
of security
holder of the
reporting
issuer

(4) Where an action under subsection 2 or 3 of section 133 is,

- (a) commenced;
- (b) commenced and prosecuted; or
- (c) continued,

by a person or company who is a security holder of the reporting issuer, the trial judge or a judge of the High Court may order that the costs properly incurred by such person or company in commencing, commencing and prosecuting or continuing the action, as the case may be, shall be paid by the reporting issuer, if he is satisfied that,

- (d) the reporting issuer failed to commence the action or had commenced it but had failed to prosecute it diligently; and
- (e) the continuance of the action was *prima facie* in the best interests of the reporting issuer and the security holders thereof.

Idem

(5) Where an action under subsection 2 or 3 of section 133 is,

- (a) commenced;
- (b) commenced and prosecuted; or
- (c) continued,

by the Commission, the trial judge or a judge of the High Court shall order the reporting issuer to pay all costs properly incurred by the Commission in commencing, commencing and prosecuting or continuing the action, as the case may be.

Idem

(6) In determining whether an action or its continuance is *prima facie* in the best interests of a reporting issuer and the

security holders thereof, the judge shall consider the relationship between the potential benefit to be derived from the action by the reporting issuer and the security holders thereof and the cost involved in the prosecution of the action.

(7) Notice of every application under subsection 1 or 2 shall be given to the Commission, the reporting issuer, and the mutual fund, as the case may be, and each of them may appear and be heard thereon. ^{Notice of application}

(8) Every order made under subsection 1 or 2 requiring or authorizing the Commission to commence and prosecute or continue an action shall provide that the reporting issuer or mutual fund, as the case may be, shall co-operate fully with the Commission in the commencement and prosecution or continuation of the action, and shall make available to the Commission all books, records, documents and other material or information known to the reporting issuer or mutual fund or reasonably ascertainable by the reporting issuer or mutual fund relevant to such action. ^{Order to co-operate}

(9) An appeal lies to the Supreme Court from any order made under this section. ^{Appeal} *New.*

135.—(1) If subsection 1 of section 39 applies to a contract and such subsection is not complied with, a person or company who has entered into the contract is entitled to rescission thereof by mailing or delivering written notice of rescission to the registered dealer within sixty days of the date of the delivery of the security to or by the person or company, as the case may be, but, in the case of a purchase by the person or company, only if he is still the owner of the security purchased. ^{Rescission of contract}

(2) If clause *c* of subsection 1 of section 36 applies to a contract and a registered dealer has failed to comply with such subsection by not disclosing that he acted as principal, a person or company who has entered into the contract is entitled to rescission thereof by mailing or delivering written notice of rescission to the registered dealer within seven days of the date of the delivery of the written confirmation of the contract. R.S.O. 1970, c. 426, s. 71 (1, 2), *amended.* ^{Idem}

(3) For the purpose of subsection 2, a confirmation sent by prepaid mail shall be deemed conclusively to have been delivered to the person or company to whom it was addressed in the ordinary course of mail. ^{Service} *New.*

- Onus** (4) In an action respecting a rescission to which this section applies, the onus of proving compliance with section 36 or 39 is upon the registered dealer.
- Limitation period** (5) No action respecting a rescission shall be commenced under this section after the expiration of a period of ninety days from the date of the mailing or delivering the notice under subsection 1 or 2. R.S.O. 1970, c. 426, s. 71 (3, 4), *amended*.
- Rescission of purchase of mutual fund security** **136.**—(1) Every purchaser of a security of a mutual fund may, where the amount of the purchase does not exceed the sum of \$50,000, rescind the purchase by notice given to the registered dealer from whom the purchase was made within forty-eight hours after receipt of the confirmation for a lump sum purchase or within sixty days after receipt of the confirmation for the initial payment under a contractual plan.
- Idem** (2) The right to rescind a purchase made under a contractual plan may be exercised only with respect to payments scheduled to be made within the time specified in subsection 1 for rescinding a purchase made under a contractual plan.
- Notice** (3) The notice mentioned in subsection 1 shall be in writing, and may be given by prepaid mail, telegram or other means.
- Service** (4) A confirmation sent by prepaid mail shall be deemed conclusively to have been received in the ordinary course of mail by the person or company to whom it was addressed.
- Reimbursement** (5) Every registered dealer from whom the purchase was made shall reimburse the purchaser who has exercised his right of rescission in accordance with this section for the amount of sales charges and fees relevant to the investment of the purchaser in the mutual fund in respect of the shares or units of which the notice of exercise of the right of rescission was given. *New*.
- Limitation period for actions** **137.**—(1) Unless otherwise provided in this Act, no action shall be commenced to enforce a right created by this Part more than three years after the date of the transaction that gave rise to the liability.
- Idem** (2) Subject to subsection 1, no action for rescission or damages created by section 129 or 130 shall be commenced more than 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action. *New*.

PART XXIII

GENERAL PROVISIONS

138. A statement as to,

Admissi-
bility in
evidence of
certified
statements

- (a) the registration or non-registration of any person or company; •
- (b) the filing or non-filing of any document or material required or permitted to be filed;
- (c) any other matter pertaining to such registration, non-registration, filing or non-filing, or to any such person, company, document or material; or
- (d) the date the facts upon which any proceedings are to be based first came to the knowledge of the Commission,

purporting to be certified by the Commission or a member thereof or by the Director is, without proof of the office or signature of the person certifying, admissible in evidence, so far as relevant, for all purposes in any action, proceeding or prosecution. R.S.O. 1970, c. 426, s. 148, *amended*.

139. The Commission shall make all material filed under this Act or the regulations available for public inspection during its normal business hours. *New*.

Material
available
for
inspection

140.—(1) No action or other proceeding for damages shall be instituted against the Commission or any member thereof, or any officer, servant or agent of the Commission for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act or a regulation, or for any neglect or default in the performance or exercise in good faith of such duty or power. R.S.O. 1970, c. 426, s. 145 (1), *amended*.

Immunity of
Commission
and officers

(2) No person or company has any rights or remedies and no proceedings lie or shall be brought against any person or company for any act or omission done or omitted in compliance or intended compliance with any requirement, order or direction made or given under this Act or the regulations. *New*.

Immunity
re intended
compliance

141. The Lieutenant Governor in Council may make regulations,

Regulations

1. prescribing categories for persons and companies and the manner of allocating persons and companies to categories, and prescribing the form and content of prospectuses, preliminary prospectuses, *pro forma* prospectuses and statements of material facts to be filed by, and financial conditions applicable to, persons and companies in accordance with their categories;
2. prescribing the form and content of financial statements and interim financial statements required to be filed under this Act;
3. prescribing requirements respecting applications for registration and renewal of registration, and providing for the expiration of registrations;
4. classifying registrants into categories and prescribing the terms and conditions of registration of registrants in each category but no registrant shall be included in a category designated as,
 - i. investment dealer, unless he is a member of the Ontario District of the Investment Dealers' Association of Canada,
 - ii. broker, unless he is a member of a stock exchange in Ontario recognized by the Commission,
 - iii. broker-dealer, unless he is a member of the Broker-Dealers' Association of Ontario;
5. regulating the listing and trading of securities and records relating thereto;
6. governing the furnishing of information to the public or to the Commission by a registrant in connection with securities or trades therein;
7. regulating the trading of securities other than on a stock exchange recognized by the Commission;
8. governing the keeping of accounts and records, the preparation and filing of financial statements of the affairs of the security issuers and the audit requirements with respect thereto;
9. respecting fees payable by an issuer to a management company as consideration for investment

advice, alone or together with administrative or management services, provided by the management company to the mutual fund;

10. respecting sales charges imposed by a distribution company or contractual plan service company under a contractual plan on purchasers of shares or units of a mutual fund, and commissions to be paid to salesmen of shares or units of a mutual fund;
11. designating any person or company or any class of persons or companies who shall not be required to obtain registration as an adviser;
12. prescribing the fees payable to the Commission including fees for filing, fees upon applications for registration, fees in respect of audits made by the Commission and other fees in connection with the administration of this Act and the regulations;
13. prescribing the documents, certificates, reports, releases, statements, agreements and other information and the form, content and other particulars relating thereto that are required to be filed, furnished or delivered under this Act and the regulations;
14. prescribing the practice and procedure of investigations under sections 11 and 13;
15. prescribing the forms for use under this Act and the regulations;
16. prescribing trades or securities, in addition to the trades and securities referred to in section 35, in respect of which registration shall not be required;
17. prescribing trades or securities, referred to in section 35 in respect of which there shall cease to be exemption from registration;
18. prescribing trades or securities, in addition to the trades and securities referred to in sections 73 and 74, in respect of which section 54 does not apply;
19. prescribing terms and conditions that shall be contained in an escrow or pooling agreement with respect to securities issued for a consideration other than cash;

20. prescribing the practice and procedure by which the Commission recognizes exempt purchasers under paragraph 4 of subsection 1 of section 35;
21. prescribing the information required or permitted to be distributed under subsection 2 of section 66;
22. respecting the matters referred to in clause *h* of subsection 2 of section 62, and, without limiting the generality of the foregoing, pertaining to requirements as to paid-up capital and surplus, liquidity of assets, ratios of debt to paid-up capital and surplus, audit procedures, the furnishing of interim financial statements and the provisions of trust indentures and the qualifications, rights, duties and obligations of trustees thereunder;
23. respecting the content and distribution of written, printed or visual material and advertising that may be distributed or used by a person or company with respect to a security whether in the course of distribution or otherwise;
24. prescribing the form and content of the reports to be filed under Part XX;
25. respecting any other matter necessary or advisable to carry out effectively the intent and purpose of Part XX;
26. prescribing the form and content of a take-over bid circular, issuer bid circular, directors' circular and a director's or officer's circular required by Part XIX;
27. prescribing a penalty for the early redemption of shares or units of a mutual fund;
28. prescribing the form and content of proxies, information circulars and reports required by Parts XVII and XVIII;
29. permitting the Commission or the Director to exempt any person or company from the provisions of the regulations or vary the provisions as they apply to any person or company. R.S.O. 1970, c. 426, s. 147; 1971, c. 31, s. 46, *amended*.

Commission's
discretion to
revoke or
vary its
decision

142. The Commission may, where in its opinion to do so would not be prejudicial to the public interest, make an order on such terms and conditions as it may impose revoking

or varying any decisions made by it under the Act or the regulations. *New.*

143. Every registration made and receipt for a prospectus issued under *The Securities Act*, being chapter 426 of the Revised Statutes of Ontario, 1970 and in effect immediately before this Act comes into force, continues in the same manner as if made or issued under this Act. *New.* Continuation
of
registration

144. The following are repealed:

Repeal

1. *The Securities Act*, being chapter 426 of the Revised Statutes of Ontario, 1970.
2. *The Securities Amendment Act, 1971*, being chapter 31.
3. *The Securities Amendment Act, 1973*, being chapter 11.
4. Section 55 of *The Government Reorganization Act, 1972*, being chapter 1.

145. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

146. This Act may be cited as *The Securities Act, 1977*. Short title

The Securities Act, 1977

1st Reading

April 5th, 1977

2nd Reading

3rd Reading

THE HON. S. B. HANDLEMAN
Minister of Consumer and
Commercial Relations

(Government Bill)

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**GOVERNMENT
Publications**

An Act to amend The Business Corporations Act

THE HON. S. B. HANDLEMAN
Minister of Consumer and Commercial Relations

EXPLANATORY NOTE

This Bill is complementary to a Bill to enact *The Securities Act, 1977*.

The provisions respecting insider trading and reporting are contained in *The Securities Act, 1977* and deleted from *The Business Corporations Act*. Similarly the provisions for the contents of financial statements for corporations that are offering their securities to the public are deleted and provided for in *The Securities Act, 1977*. Other changes are for the purpose of co-ordinating *The Business Corporations Act* with the new *Securities Act, 1977*.

An Act to amend The Business Corporations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Paragraph 3 of subsection 1 of section 1 of *The Business Corporations Act*, being chapter 53 of the Revised Statutes of Ontario, 1970, is repealed and the following substituted therefor:

3. “associate”, where used to indicate a relationship with any person, means,

- i. any body corporate of which such person beneficially owns, directly or indirectly, voting securities carrying more than 10 per cent of the voting rights attached to all securities of the company for the time being outstanding,
- ii. any partners of that person,
- iii. any trust or estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity, or
- iv. any relative of such person, including his spouse, or of his spouse who has the same home as such person.

(2) Paragraph 13 of subsection 1 of the said section 1 is repealed. s. 1 (1),
par. 13,
repealed

(3) Paragraph 15 of subsection 1 of the said section 1 is repealed and the following substituted therefor: s. 1 (1),
par. 15,
re-enacted

15. “individual” means a natural person, but does not include a partnership, unincorporated association,

unincorporated syndicate, unincorporated organization, trust, or a natural person in his capacity as trustee, executor, administrator or other legal personal representative.

s. 1 (1),
par. 19,
re-enacted

- (4) Paragraph 19 of subsection 1 of the said section 1, as amended by the Statutes of Ontario, 1972, chapter 138, section 1, is repealed and the following substituted therefor:

19. "officer" means the chairman, any vice-chairman of the board of directors, the president, any vice-president, the secretary, the assistant secretary, the treasurer, the assistant treasurer and the general manager of a corporation, and any other person designated an officer of a corporation by by-law or by resolution of the directors or any other individual who performs functions for a corporation similar to those normally performed by an individual occupying any such office.

s. 1 (1),
par. 25,
re-enacted

- (5) Paragraph 25 of subsection 1 of the said section 1 is repealed and the following substituted therefor:

25. "senior officer" means,

i. the chairman or a vice-chairman of the board of directors, the president, a vice-president, the secretary, the treasurer or the general manager of a corporation or any other individual who performs functions for a corporation similar to those normally performed by an individual occupying any such office, and

ii. each of the five highest paid employees of a corporation, including any individual referred to in subparagraph i.

s. 1 (1),
amended

- (6) Subsection 1 of the said section 1, as amended by the Statutes of Ontario, 1971, chapter 26, section 1, 1972, chapter 1, section 30, 1972, chapter 138, section 1 and 1974, chapter 26, section 1, is further amended by adding thereto the following paragraph:

27a. "voting security" means any security other than a debt security of an issuer carrying a voting right either under all circumstances or under some circumstances that have occurred and are continuing.

s. 1 (6),
repealed

- (7) Subsection 6 of the said section 1 is repealed.

- (8) Clause *b* of subsection 9 of the said section 1, as re-enacted by the Statutes of Ontario, 1972, chapter 138, section 1, is repealed and the following substituted therefor: s. 1 (9) (b),
re-enacted

(b) any of its securities have been at any time since the 1st day of May, 1967, listed and posted for trading on any stock exchange in Ontario recognized by the Commission, regardless of when such listing and posting for trading commenced,

.

2. Section 41 of the said Act, as re-enacted by the Statutes of Ontario, 1972, chapter 138, section 14, is repealed. s. 41,
repealed

3. Clause *b* of subsection 2 of section 118 of the said Act is repealed and the following substituted therefor: s. 118 (2) (b),
re-enacted

(b) any solicitation by a person made under section 49 of *The Securities Act, 1977*; and 1977, c. . .

.

4. Section 148, as amended by the Statutes of Ontario, 1971, chapter 26, section 23, and sections 149, 150, 151 and 152 of the said Act are repealed. ss. 148-152,
repealed

- 5.—(1) Clause *a* of subsection 1 of section 172 of the said Act is amended by inserting after “incorporation” in the third line “reorganization or continuation, as the case may be” and by striking out “completed” in the seventh line. s. 172 (1) (a),
amended

- (2) Clause *b* of subsection 1 of the said section 172 is repealed and the following substituted therefor: s. 172 (1) (b),
re-enacted

(b) in the case of a corporation that is offering its securities to the public, the financial statement required to be filed under *The Securities Act, 1977* and the regulations thereunder relating separately to,

(i) the period that commenced on the date of incorporation, reorganization or continuation, as the case may be, and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, that commenced immediately after the end of the last financial year and ended not more than six months before the annual meeting, as the case may be, and

(ii) the period covered by the financial year next preceding the last financial year, if any.

- s. 172 (2),
re-enacted
- (3) Subsection 2 of the said section 172 is repealed and the following substituted therefor:
- Designation
of state-
ments
- (2) It is not necessary to designate the statements referred to in clause *a* of subsection 1 as the statement of profit and loss, statement of surplus and balance sheet.
- s. 173 (1)
(*a, k, l*),
repealed
- 6.**—(1) Clause *a*, and clauses *k* and *l* as enacted by the Statutes of Ontario, 1971, chapter 26, section 26 and amended by 1972, chapter 138, section 50, of subsection 1 of section 173 of the said Act are repealed.
- s. 173 (2),
amended
- (2) Subsection 2 of the said section 173, as amended by the Statutes of Ontario, 1972, chapter 138, section 50, is further amended by striking out “*h, k* and *l*” in the amendment of 1972 and inserting in lieu thereof “and *h*”.
- s. 173 (3, 4),
repealed
- (3) Subsections 3 and 4 of the said section 173 are repealed.
- ss. 175, 176,
repealed
- 7.** Sections 175 and 176 of the said Act are repealed.
- s. 178 (3),
pars. 16,
18-21
repealed
- 8.**—(1) Paragraph 16, and paragraphs 18 to 21 as enacted by the Statutes of Ontario, 1971, chapter 26, section 28, of subsection 3 of section 178 of the said Act are repealed.
- s. 178 (4),
repealed
- (2) Subsection 4 of the said section 178, as enacted by the Statutes of Ontario, 1972, chapter 138, section 51, is repealed.
- s. 179 (1),
amended
- 9.**—(1) Subsection 1 of section 179 of the said Act is amended by inserting after “corporation” in the second line “to which clause *a* of subsection 1 of section 172 applies”.
- s. 179 (3),
amended
- (2) Subsection 3 of the said section 179 is amended by inserting after “corporation” in the second line “to which either clause *a* or *b* of subsection 1 of section 172 applies”.
- s. 185,
re-enacted
- 10.** Section 185 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 26, section 30, is repealed and the following substituted therefor:
- Interim
financial
statements
1977, c. . . .
- 185.**—(1) A corporation that is offering its securities to the public shall send to each shareholder a copy of an interim financial statement required to be filed under *The Securities Act, 1977* and the regulations thereunder.
- Distribution
to
shareholders
- (2) The interim financial statement required by subsection 1 shall be sent by prepaid mail to each shareholder, within sixty days of the date to which it is made up, at his latest address as shown on the records of the corporation.

11. Subsection 2 of section 251 of the said Act, as re-enacted by the Statutes of Ontario, 1976, chapter 67, section 1, is amended by striking out "section 134 of *The Securities Act*" in the second and third lines and in the sixth and seventh lines and inserting in lieu thereof in each instance "sections 78 and 79 of *The Securities Act, 1977*". s. 251 (2),
amended
- 12.—(1) Subsection 2 of section 260 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 26, section 43, is repealed. s. 260 (2),
repealed
- (2) Subsection 3 of the said section 260 is amended by striking out "subsections 1 and 2" in the first line and inserting in lieu thereof "subsection 1". s. 260 (3),
amended
13. Subsection 2 of section 261 of the said Act is repealed and the following substituted therefor: s. 261 (2),
re-enacted
- (2) Where it appears to the Commission that any person or corporation to which section 117 or subsection 1 of section 118 applies has failed to comply with or is contravening any such provision, the Commission may, notwithstanding the imposition of any penalty in respect of such non-compliance or contravention and in addition to any other rights it may have, apply to the court for an order, Idem
- (a) directing such person or corporation to comply with such provision or restraining such person or corporation from contravening such provision; and
- (b) directing the directors and senior officers of such person or corporation to cause such person or corporation to comply with or to cease contravening any such provision,
- and upon such application, the court may make such order or such other order as the court thinks fit.
14. Section 269 of the said Act is repealed and the following substituted therefor: s. 269,
re-enacted
269. Any person or corporation directly affected by a decision of the Commission under this Act may appeal to the Supreme Court and subsections 2 to 6 of section 9 of *The Securities Act, 1977* apply to the appeal. Appeal
from
Commission
1977, c. ...
15. Clause *e* of section 271 of the said Act is repealed. s. 271 (e),
repealed
16. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment
17. This Act may be cited as *The Business Corporations Amendment Act, 1977*. Short title

An Act to amend
The Business Corporations Act

1st Reading

April 5th, 1977

2nd Reading

3rd Reading

THE HON. S. B. HANDLEMAN
Minister of Consumer and
Commercial Relations

(Government Bill)

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publication

An Act to amend The Labour Relations Act

MR. HAGGERTY

EXPLANATORY NOTE

The purpose of the Bill is to provide a mechanism whereby the Minister can order parties to a strike or lock-out to end the strike or lock-out for a period of sixty days during which time the parties try to reach a settlement.

An Act to amend The Labour Relations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Labour Relations Act*, being chapter 232 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following section: s. 47a,
enacted

47a.—(1) Notwithstanding any other provisions of this Act or any provision of a collective agreement, the Minister may, where a strike or lock-out Enjoining
of strike or
lock-out

- (a) affects an entire industry, trade or vocation or a substantial part thereof engaged in trade, commerce, transportation, transmission or communication or engaged in the production of goods for commerce; or

- (b) imperils the provincial health, safety or welfare,

order the parties to the strike or lock-out to enjoin such strike or lock-out for a period of sixty days from the date of the order.

(2) Where an order has been issued under subsection 1, the Minister shall appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement. Conciliation
officer

(3) Section 17 applies *mutatis mutandis* to a conciliation officer appointed under subsection 2. Application

(4) Notwithstanding subsection 1 or the provisions of any other Act, where a report is given under subsection 3 of section 17 or subsection 5 of section 31 and the report indicates that the parties are unable to effect a collective agreement, the parties may continue to strike or lock-out Strike or
lock-out
may
continue

lock-out, as the case may be, without the taking of a new strike vote.

Commence-
ment

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. This Act may be cited as *The Labour Relations Amendment Act, 1977*.

Bill 22
An Act to amend
The Labour Relations Act

1st Reading

April 5th, 1977

2nd Reading

3rd Reading

MR. HAGGERTY

(Private Member's Bill)

A 24N
B
- R 53

BILL 23

Private Member's Bill

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publication

An Act to amend The Education Act, 1974

MR. STONG



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

This Bill defines "compulsory school age" and "special education" and guarantees every child of compulsory school age a right to an education. The Bill also transfers the establishing of special education programs from the discretion to the duty of a school board.

An Act to amend The Education Act, 1974

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 1 of section 1 of *The Education Act, 1974*, <sup>s. 1 (1),
amended</sup> being chapter 109, as amended by the Statutes of Ontario, 1976, chapter 50, section 1, is further amended by adding thereto the following paragraphs:

6a. "compulsory school age" includes every child who attains the age of six years on or before the first school day in September in any year and continues until he attains the age of sixteen years;

.

62a. "special education" means a program which includes facilities adequate to instruct a child who exhibits a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written languages.

2. The said Act is amended by adding thereto the following <sup>s. 19a,
enacted</sup> section:

19a. Every child of compulsory school age has a right <sup>Right to
education</sup> to an education.

3. Section 146 of the said Act, as amended by the Statutes of <sup>s. 146,
amended</sup> Ontario, 1976, chapter 50, section 21, is further amended by adding thereto the following paragraph:

17. establish, subject to the regulations, special education programs to provide special education services for children who require such services.

4. Paragraph 40 of subsection 1 of section 147 of the said Act is <sup>s. 147 (1),
par. 40,
repealed</sup> repealed.

Commence-
ment

5. This Act comes into force on the day it receives Royal Assent.

Short title

6. This Act may be cited as *The Education Amendment Act, 1977*.

An Act to amend
The Education Act, 1974

1st Reading

April 5th, 1977

2nd Reading

3rd Reading

MR. STONG

(Private Member's Bill)

424W
YB
- B 56

BILL 24

Government Bill

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publications

The Audit Act, 1977



THE HON. W. D. McKEOUGH
Treasurer of Ontario and Minister of Economics and
Intergovernmental Affairs

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The purpose of the Bill is to define the role and the responsibility of the Provincial Auditor. The Bill provides for the Auditor's status, scope of practice, reports and relationships to others.

The main provisions of the Bill are:

1. The Office of the Provincial Auditor is recognized, consisting of the Auditor, the Assistant Auditor and other staff.
2. The Auditor and Assistant Auditor are officers of the Assembly.
3. The Auditor is required to audit the accounts of the Consolidated Revenue Fund and to direct the performance of the audits of agencies of the Crown that are audited by auditors other than the Auditor. Such other auditors are required to report to the Auditor.
4. The auditors of Crown controlled corporations are required to deliver to the Auditor copies of their reports, their recommendations to management and copies of the audited financial statements of the agencies or corporations, as well as to provide full documentation and explanations to the Auditor in respect of their audits.
5. The Auditor is required to make an annual report to the Speaker of the Assembly who is to lay the report before the Assembly forthwith if it is in session or, if not, not later than the tenth day of the next session. The Auditor is also empowered to make special reports to the Speaker on matters that, in the opinion of the Auditor, should not be deferred until the annual report and these must also be laid before the Assembly forthwith by the Speaker.
6. In his annual report, the Auditor is required to report on the work of the Office of the Auditor, the examination of accounts of receipts and disbursements of public money, the statements of Assets and Liabilities, the Consolidated Revenue Fund and Revenue and Expenditure as reported in the Public Accounts, special warrants and Management Board orders authorizing payments in excess of appropriations, and such matters as, in the opinion of the Auditor, should be brought to the attention of the Assembly.
7. The Auditor is empowered to perform inspection audits in respect of payments of grants and may require a full accounting from the recipient of a grant. Obstruction of the Auditor or any member of the Office of the Auditor in the performance of an inspection audit is made an offence punishable on summary conviction.
8. When requested by the committee, the Auditor is required to attend at meetings of the standing Public Accounts Committee of the Assembly in order to assist the committee, and the Auditor is required to examine into and report on any matter referred to him by a resolution of the committee.

9. The Auditor is required to undertake special assignments required by the Assembly, by the standing Public Accounts Committee of the Assembly or by a minister of the Crown, but such assignments are not to take precedence over the Auditor's other work and the Auditor may decline an assignment from a minister if, in the opinion of the Auditor, the assignment might conflict with the other duties of the Auditor.
10. The Auditor is empowered to advise appropriate persons employed in the public service as to any matter that comes or that may come to the attention of the Auditor in the course of the exercise of his powers or the performance of his duties as Auditor.
11. Subject to the approval of the Board of Internal Economy, the Auditor is empowered to employ professional staff and other persons for the efficient operation of the Office of the Auditor, to determine the salary of the Assistant Auditor and the salaries and remuneration and terms and conditions of employment of the employees of the Office of the Auditor.
12. The employees of the Office of the Auditor are required to take oaths of office, secrecy and allegiance.
13. The Auditor, the Assistant Auditor and the full-time permanent and probationary employees of the Office of the Auditor are entitled to the same employee benefits under *The Public Service Act* as civil servants who are not within bargaining units and *The Public Service Superannuation Act* is made applicable to them.
14. Employees of the Office of the Auditor are prohibited from being candidates in federal, provincial or municipal elections, soliciting funds for any party or candidate, associating their position in the Office of the Auditor with any political activity.
15. Provision is made for an examination and report to the Board of Internal Economy and the Assembly as to the disbursements of the Office of the Auditor.
16. The estimates for the Office of the Auditor are to be prepared by the Auditor, reviewed by the Board of Internal Economy, laid before the Assembly, as altered by the Board, and referred by the Assembly to a committee of the Assembly for review.

BILL 24

1977

The Audit Act, 1977

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "agency of the Crown" means an association, authority, board, commission, corporation, council, foundation, institution, organization or other body,
 - (i) whose accounts the Auditor is appointed to audit by its shareholders or by its board of management, board of directors or other governing body,
 - (ii) whose accounts are audited by the Auditor under any other Act or whose accounts the Auditor is appointed by the Lieutenant Governor in Council to audit,
 - (iii) whose accounts are audited by an auditor, other than the Auditor, appointed by the Lieutenant Governor in Council, or
 - (iv) the audit of the accounts of which the Auditor is required to direct or to review under any other Act,

but does not include one that is not affected by *The Crown Agency Act*;

R.S.O. 1970,
c. 100

- (b) "Assistant Auditor" means the Assistant Provincial Auditor;
- (c) "Auditor" means the Provincial Auditor;
- (d) "Board" means the Board of Internal Economy established under section 82 of *The Legislative Assembly Act*;

R.S.O. 1970,
c. 240

(e) "Crown controlled corporation" means a corporation that is not an agency of the Crown and having 50 per cent or more of its issued and outstanding shares vested in Her Majesty in right of Ontario or having the appointment of a majority of its board of directors made or approved by the Lieutenant Governor in Council;

1972, c. 3

(f) "fiscal year" has the same meaning as in *The Ministry of Treasury, Economics and Intergovernmental Affairs Act, 1972*;

(g) "inspection audit" means an examination of accounting records;

(h) "Office of the Auditor" means the Office of the Provincial Auditor;

R.S.O. 1970,
c. 166

(i) "public money" has the same meaning as in *The Financial Administration Act. New.*

Office
of the
Auditor

2. The Office of the Provincial Auditor shall consist of the Auditor, the Assistant Auditor and such employees as may be required from time to time for the proper conduct of the business of the Office. *New.*

Provincial
Auditor

3. The Auditor shall be appointed as an officer of the Assembly by the Lieutenant Governor in Council on the address of the Assembly. R.S.O. 1970, c. 36, s. 1 (1), *amended.*

Tenure of
office and
removal

4. The Auditor may hold office until the end of the month in which he attains the age of sixty-five years and may be reappointed for a period not exceeding one year at a time until the end of the month in which he attains seventy years of age, but is removable at any time for cause by the Lieutenant Governor in Council on the address of the Assembly. R.S.O. 1970, c. 36, s. 2, *amended.*

Salary of
Auditor

5.—(1) The Auditor shall be paid a salary within the highest range of salaries paid to deputy ministers in the Ontario civil service and is entitled to the privileges of office of a senior deputy minister.

Idem

(2) The salary of the Auditor, within the salary range referred to in subsection 1, shall be determined and reviewed annually by the Board.

Idem

(3) The salary of the Auditor shall be charged to and paid out of the Consolidated Revenue Fund and shall not

be reduced except on address of the Assembly. R.S.O. 1970, c. 36, s. 1 (2, 3), *amended*.

6.—(1) The Assistant Auditor shall be appointed as an ^{Assistant Auditor} officer of the Assembly by the Lieutenant Governor in Council upon the recommendation of the Auditor.

(2) The Assistant Auditor, under the direction of the ^{Idem} Auditor, shall assist in the exercise of the powers and the performance of the duties of the Auditor and, in the absence or inability to act of the Auditor, shall act in the place of the Auditor. R.S.O. 1970, c. 36, s. 3, *amended*.

7. The persons appointed as Auditor and Assistant Auditor ^{Qualifications} shall be persons who are licensed under *The Public Ac-* ^{R.S.O. 1970, c. 373} *countancy Act. New.*

8. The Provincial Auditor and the Assistant Provincial ^{Transitional} Auditor holding office under *The Audit Act*, being chapter 36 of the Revised Statutes of Ontario, 1970, immediately before this Act comes into force shall be deemed to be appointed under this Act. *New.*

9.—(1) The Auditor shall audit, on behalf of the As- ^{Audit of Consolidated Revenue Fund} sembly and in such manner as the Auditor considers necessary, the accounts and records of the receipt and disbursement of public money forming part of the Consolidated Revenue Fund whether held in trust or otherwise. 1971, c. 54, s. 4, *amended*.

(2) Where the accounts and financial transactions of an ^{Audit of agencies of the Crown} agency of the Crown are not audited by another auditor, the Auditor shall perform the audit, and, notwithstanding any provision of any other Act, where the accounts and financial transactions of an agency of the Crown are audited by another auditor, the audit shall be performed under the direction of the Auditor and such other auditor shall report to the Auditor.

(3) Where the accounts of a Crown controlled corporation ^{Audit of Crown controlled corporations} are audited other than by the Auditor, the person or persons performing the audit,

- (a) shall deliver to the Auditor forthwith after completion of the audit a copy of their report of their findings and their recommendations to the management and a copy of the audited financial statements of the corporation;

- (b) shall make available forthwith to the Auditor, when so requested by the Auditor, all working papers, reports, schedules and other documents in respect of the audit or in respect of any other audit of the corporation specified in the request;
- (c) shall provide forthwith to the Auditor, when so requested by the Auditor, a full explanation of work performed, tests and examinations made and the results obtained; and any other information within the knowledge of such person or persons in respect of the corporation.

Additional
examination
and
investigation

(4) Where the Auditor is of the opinion that any information, explanation or document that is provided, made available or delivered to him by the auditor or auditors referred to in subsection 2 or 3 is insufficient, the Auditor may conduct or cause to be conducted such additional examination and investigation of the records and operations of the agency or corporation as the Auditor considers necessary. *New.*

Information
and access
to records

10. Every ministry of the public service and every agency of the Crown shall furnish the Auditor with such information regarding its powers, duties, activities, organization, financial transactions and methods of business as the Auditor from time to time requires, and the Auditor shall be given access to all books, accounts, financial records, reports, files and all other papers, things or property belonging to or in use by the ministry or agency of the Crown and necessary to the performance of the duties of the Auditor under this Act. R.S.O. 1970, c. 36, s. 7, *amended.*

Accommoda-
tion in
ministries
and Crown
agencies

11. For the purposes of the exercise of his powers or the performance of his duties under this Act, the Auditor may station one or more members of the Office of the Auditor in any ministry of the public service and in any agency of the Crown and the ministry or agency shall provide such accommodation as is required for such purposes. R.S.O. 1970, c. 36, s. 10, *amended.*

Annual
report

12.—(1) The Auditor shall report annually to the Speaker of the Assembly after each fiscal year is closed and the Public Accounts are laid before the Assembly, but not later than the 31st day of December in each year unless the Public Accounts are not laid before the Assembly by that day, and may make a special report to the Speaker at any time on any matter that in the opinion of the Auditor should not be deferred until the annual report, and the Speaker shall lay each such report before the Assembly

forthwith if it is in session or, if not, not later than the tenth day of the next session.

(2) In his annual report in respect of each fiscal year, ^{Contents of report} the Auditor shall report on,

- (a) the work of the Office of the Auditor;
- (b) the examination of accounts of receipts and disbursements of public money;
- (c) the examination of the statements of Assets and Liabilities, the Consolidated Revenue Fund and Revenue and Expenditure as reported in the Public Accounts, and shall express an opinion as to whether the statements present fairly the financial position of the Province, the results of its operations and the changes in its financial position in accordance with the accounting principles stated in the Public Accounts applied on a basis consistent with that of the preceding fiscal year;
- (d) all special warrants issued to authorize payments, stating the date of each special warrant, the amount authorized and the amount expended;
- (e) all orders of the Management Board of Cabinet made to authorize payments in excess of appropriations, stating the date of each order, the amount authorized and the amount expended;
- (f) such matters as, in the opinion of the Auditor, should be brought to the attention of the Assembly including, without limiting the generality of the foregoing, any matter related to the audit of agencies of the Crown or Crown controlled corporations or any cases where the Auditor has observed that,
 - (i) accounts were not properly kept or public money was not fully accounted for,
 - (ii) essential records were not maintained or the rules and procedures applied were not sufficient to safeguard and control public property or to effectively check the assessment, collection and proper allocation of revenue or to ensure that expenditures were made only as authorized,

- (iii) money was expended other than for the purposes for which it was appropriated,
- (iv) money was expended without due regard to economy and efficiency, or
- (v) where procedures could be used to measure and report on the effectiveness of programs, the procedures were not established or, in the opinion of the Auditor, the established procedures were not satisfactory. R.S.O. 1970, c. 36, s. 20; 1971, c. 54, s. 5, *amended*.

Inspection
audit

13.—(1) The Auditor may perform an inspection audit in respect of a payment in the form of a grant from the Consolidated Revenue Fund or an agency of the Crown and may require a recipient of such a payment to prepare and to submit to the Auditor a financial statement that sets out the details of the disposition of the payment by the recipient.

Obstruction
of Auditor

(2) No person shall obstruct the Auditor or any member of the Office of the Auditor in the performance of an inspection audit or conceal or destroy any books, papers, documents or things relevant to the subject-matter of the inspection audit.

Offence

(3) Every person who knowingly contravenes subsection 2 and every director or officer of a corporation who knowingly concurs in such contravention is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

Idem,
corporation

(4) Where a corporation is convicted of an offence under subsection 3, the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein. *New.*

Examination
on oath

14. The Auditor may examine any person on oath on any matter pertinent to any account subject to audit by the Auditor or in respect of any inspection audit by the Auditor and for the purpose of such an examination the Auditor has the powers conferred upon a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to the examination as if it were an inquiry under that Act. R.S.O. 1970, c. 36, s. 22, *amended*.

1971, c. 49

Proviso

15. Nothing in this Act shall be construed to require the Auditor,

- (a) to report on any matter that, in the opinion of the Auditor, is immaterial or insignificant; or
- (b) to audit or direct the audit of or report on the accounts of a body not referred to in this Act in the absence of such a requirement in any other Act in respect of the body. R.S.O. 1970, c. 36, s. 21, *amended*.

16. At the request of the standing Public Accounts Committee of the Assembly, the Auditor and any member of the Office of the Auditor designated by the Auditor shall attend at the meetings of the committee in order,

Attendance
at standing
Public
Accounts
Committee
of the
Assembly

- (a) to assist the committee in planning the agenda for review by the committee of the Public Accounts and the annual report of the Auditor; and
- (b) to assist the committee during its review of the Public Accounts and the annual report of the Auditor,

and the Auditor shall examine into and report on any matter referred to him in respect of the Public Accounts by a resolution of the committee. *New*.

17. The Auditor shall perform such special assignments as may be required by the Assembly, the standing Public Accounts Committee of the Assembly, by resolution of the committee, or by a minister of the Crown in right of Ontario but such special assignments shall not take precedence over the other duties of the Auditor under this Act and the Auditor may decline an assignment by a minister of the Crown that, in the opinion of the Auditor, might conflict with the other duties of the Auditor. *New*.

Special
assignments

18. The Auditor may advise appropriate persons employed in the public service of Ontario as to any matter that comes or that may come to the attention of the Auditor in the course of the exercise of his powers or the performance of his duties as Auditor. *New*.

Power to
advise

19. Audit working papers of the Office of the Auditor shall not be laid before the Assembly or any committee of the Assembly. *New*.

Audit
working
papers

20.—(1) Subject to the approval of the Board and to sections 22, 25 and 26, the Auditor may employ such professional staff and other persons as the Auditor considers necessary for the efficient operation of the Office of the

Staff

Auditor and may determine the salary of the Assistant Auditor and the salaries and remuneration, which shall be comparable to the salary ranges of similar positions or classifications in the public service of Ontario, and the terms and conditions of employment of the employees of the Office of the Auditor. R.S.O. 1970, c. 36, s. 4, *amended*.

Transition
of staff

(2) On the day this Act comes into force, the members of the public service of Ontario who are employed on the staff of the Auditor shall cease to be employed in the public service and each such person shall become an employee of the Office of the Auditor at a salary of not less than he was receiving on the day immediately before the day this Act comes into force. *New*.

Oath of
office and
secrecy and
oath of
allegiance

21.—(1) Every employee of the Office of the Auditor, before performing any duty as an employee of the Auditor, shall take and subscribe before the Auditor or a person designated in writing by the Auditor,

(a) the following oath of office and secrecy:

I,, do swear (*or* solemnly affirm) that I will faithfully discharge my duties as an employee of the Provincial Auditor and will observe and comply with the laws of Canada and Ontario and, except as I may be legally required, I will not disclose or give to any person any information or document that comes to my knowledge or possession by reason of my being an employee of the Office of the Auditor.

So help me God. (Omit this line in an affirmation)

(b) the following oath of allegiance:

I,, do swear (*or* solemnly affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second (*or the reigning sovereign for the time being*), her heirs and successors according to law.

So help me God. (Omit this line in an affirmation)

Idem

(2) The Auditor may require any person or class of persons appointed to assist the Auditor for a limited period of time or in respect of a particular matter to take and subscribe either or both of the oaths set out in subsection 1.

Record
of oaths

(3) A copy of each oath administered to an employee of the Office of the Auditor under subsection 1 shall be kept in the file of the employee in the Office of the Auditor.

Cause for
dismissal

(4) The failure of an employee of the Office of the Auditor to take and subscribe or to adhere to either of the oaths

required by subsection 1 may be considered as cause for dismissal. *New.*

22.—(1) The employee benefits applicable from time to time pursuant to *The Public Service Act* to civil servants who are not within a unit of employees established for collective bargaining under any Act apply or continue to apply, as the case may be, to the Auditor, the Assistant Auditor and to the full-time permanent and probationary employees of the Office of the Auditor and the Board or any person authorized by order of the Board may exercise the powers and duties of the Civil Service Commission and the Auditor or any person authorized in writing by the Auditor may exercise the powers and duties of a deputy minister pursuant to that Act in respect of such benefits.

Benefits

R.S.O. 1970,
c. 386

(2) *The Public Service Superannuation Act* applies to the full-time permanent and probationary employees of the Office of the Auditor as though the Office of the Auditor were a commission designated by the Lieutenant Governor in Council under section 27 of that Act and to the Auditor and Assistant Auditor as though they were members of such a commission who held positions designated by and whose requests for such designations had been approved by the Lieutenant Governor in Council under section 27 of that Act and all credits in the Public Service Superannuation Fund of the full-time permanent and probationary employees of the Office of the Auditor and of the Auditor and the Assistant Auditor accumulated under that Act immediately before the coming into force of this Act are preserved and continued in accordance with that Act. *New.*

Super-
annuation
benefitsR.S.O. 1970,
c. 387

23. Subject to the approval of the Board, the Auditor from time to time may appoint one or more persons having technical or special knowledge of any kind to assist the Auditor for a limited period of time or in respect of a particular matter and the moneys required for the purposes of this section shall be charged to and paid out of the Consolidated Revenue Fund. *New.*

Expert
assistance

24. The Auditor may delegate in writing to any other member of the Office of the Auditor authority to exercise any power or perform any duty of the Auditor other than reporting to the Assembly. R.S.O. 1970, c. 36, s. 6, *amended.*

Delegation
of authority

25.—(1) An employee of the Office of the Auditor shall not,

Political
activities
of employees
of the Office
of the Auditor

(a) be a candidate in a provincial or federal election or in an election for any municipal office including

a local board of a municipality within the meaning of *The Municipal Affairs Act*;

R.S.O. 1970,
c. 118

(b) solicit funds for a provincial, federal or municipal party or candidate; or

(c) associate his position in the Office of the Auditor with any political activity.

Cause for
dismissal

(2) Contravention of any of the provisions of subsection 1 may be considered as cause for dismissal. *New.*

Conduct
and
discipline

26.—(1) The Auditor may make orders and rules for the conduct of the internal business of the Office of the Auditor and, after a hearing, may suspend, demote or dismiss any employee of the Office of the Auditor for cause. R.S.O. 1970, c. 36, s. 5, *amended.*

Hearing
R.S.O. 1970,
c. 386

(2) The provisions of *The Public Service Act* and of Regulation 749 of Revised Regulations of Ontario, 1970 that apply in relation to suspension from employment pending an investigation and in relation to a hearing by a deputy minister or his delegate as to cause for dismissal, other than as to notice to the Civil Service Commission, apply with necessary modifications where the Auditor is of the opinion that there may exist cause for the suspension without pay, demotion or dismissal of an employee of the Office of the Auditor, and, for the purpose, the Auditor shall be deemed to be a deputy minister.

Appeals

(3) A decision of the Auditor to demote, suspend or dismiss an employee may be appealed by the employee, within fourteen days after the decision has been communicated to him, to the Public Service Grievance Board established pursuant to *The Public Service Act*.

Grievance
Board
authorized
to hear
appeals

(4) The Public Service Grievance Board may hear and dispose of an appeal under this section and the provisions of Part V of Regulation 749 of Revised Regulations of Ontario, 1970 that apply in relation to a grievance for dismissal apply with necessary modifications to an appeal under this section, and, for the purpose, the Auditor shall be deemed to be a deputy minister and the decision of the Public Service Grievance Board is final and the Public Service Grievance Board shall report its decision and reasons in writing to the Auditor and to the appellant. *New.*

Proceedings
privileged

27.—(1) No proceedings lie against the Auditor, the Assistant Auditor, any person employed in the Office of the Auditor or any person appointed to assist the Auditor

for a limited period of time or in respect of a particular matter, for anything he may do or report or say in the course of the exercise or the intended exercise of functions under this Act, unless it is shown that he acted in bad faith.

(2) The Auditor, the Assistant Auditor and each person employed in the Office of the Auditor or appointed to assist the Auditor for a limited period of time or in respect of a particular matter shall preserve secrecy with respect to all matters that come to his knowledge in the course of his employment or duties under this Act and shall not communicate any such matters to any person, except as may be required in connection with the administration of this Act or any proceedings under this Act or under the *Criminal Code* (Canada). Information
confidential

R.S.C. 1970,
c. C-34

28. A person or persons, licensed under *The Public Accountancy Act* and appointed by the Board, shall examine the accounts relating to the disbursements of public money on behalf of the Office of the Auditor and shall report thereon to the Board and the chairman of the Board shall cause the report to be laid before the Assembly if it is in session or, if not, at the next ensuing session. 1971, c. 54, s. 6, *part, amended*. Examination
of accounts
of Office of
the Auditor
R.S.O. 1970,
c. 373

29.—(1) The Auditor shall present annually to the Board estimates of the sums of money that will be required for the purposes of this Act. Estimates

(2) The Board shall review and may alter as it considers proper the estimates presented by the Auditor, and the chairman of the Board shall cause the estimates as altered by the Board to be laid before the Assembly and the Assembly shall refer the estimates laid before it to a committee of the Assembly for review. Idem

(3) The moneys required for the purposes of this Act, other than under sections 5 and 23, shall be paid out of the moneys appropriated therefor by the Legislature. *New*. Idem

30. The following are repealed:

Repeals

1. *The Audit Act*, being chapter 36 of the Revised Statutes of Ontario, 1970.
2. *The Audit Amendment Act, 1971*, being chapter 54.
3. Sections 7 and 8 of *The Ministry of Treasury, Economics and Intergovernmental Affairs Act, 1972*. 1972, c. 3

1973, c. 33

4. Section 2 of *The Ministry of Treasury, Economics and Intergovernmental Affairs Amendment Act, 1973*.

Commence-
ment

31. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

32. This Act may be cited as *The Audit Act, 1977*.

Bills

The Audit Act, 1977

1st Reading

April 6th, 1977

2nd Reading

3rd Reading

THE HON. W. D. McKEOUGH
Treasurer of Ontario and
Minister of Economics and
Intergovernmental Affairs

(Government Bill)

KB
-B 56

BILL 25

Private Member's Bill

4TH SESSION, 30TH LEGISLATURE, ~~ONTARIO~~
26 ELIZABETH II, 1977

ment
lication

An Act to establish a Medical Data Bank

MR. NEWMAN (Windsor-Walkerville)

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The Bill establishes a medical data bank in which would be stored the medical histories of persons in Ontario. The data bank would be of great assistance to doctors and hospitals where a patient moves to another city, changes doctors or is taking prescribed drugs or is involved in an accident. Participation in the use of the data bank would be on a voluntary basis only.

BILL 25

1977

An Act to establish a Medical Data Bank

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

(a) "medical data bank" means the medical data bank operated and maintained under this Act;

(b) "Ministry" means the Ministry of Health;

(c) "public hospital" means a hospital approved as a public hospital under *The Public Hospitals Act*;

R.S.O. 1970,
c. 378

(d) "regulations" means the regulations made under this Act.

2. The Ministry shall operate and maintain a medical data bank, in the form of a computer, in which shall be stored the information fed into it concerning medical histories.

Medical
data bank
established

3. Every public hospital shall maintain an outlet of the medical data bank into which may be placed the medical histories of persons using the hospital in the form prescribed by the regulations.

Data bank
outlet in
each
hospital

4.—(1) A medical history of a person shall not be stored in the medical data bank without the written consent of the person whose medical history is to be stored.

Consent
required

(2) The medical history of a person shall not be removed from the medical data bank without the written consent of his legally qualified medical practitioner.

Idem

5. Any person may apply to the Ministry directly to have his medical history stored in the medical data bank.

Application
to Ministry

Ministry
must file
medical
history in
data bank

6. Where a person applies to have his medical history stored in the medical data bank under section 4, the Ministry shall accept the information for storage where it is in the form prescribed by the regulations.

Offence

7. Every person who,

- (a) knowingly, furnishes false information in any application under this Act or the regulations;
- (b) fails to comply with any other requirement made under this Act; or
- (c) contravenes any provision of this Act or the regulations,

is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or to both.

Regulations

8. The Lieutenant Governor in Council may make regulations,

- (a) prescribing the type, form and style of information that may be stored in the medical data bank;
- (b) requiring that persons use their social insurance numbers as identification when using the medical data bank; and
- (c) requiring that information that is fed into the medical data bank be prepared by a legally qualified medical practitioner or under the supervision of a legally qualified medical practitioner at the written request of the individual concerned.

Commence-
ment

9. This Act comes into force on the day it receives Royal Assent.

Short title

10. This Act may be cited as *The Medical Data Bank Act, 1977*.

An Act to establish a Medical Data Bank

1st Reading

April 6th, 1977

2nd Reading

3rd Reading

MR. NEWMAN (Windsor-Walkerville)

(Private Member's Bill)

A24W
XB
-B56

BILL 26

Government Bill

4TH SESSION, 30TH LEGISLATURE, QNTARIO
26 ELIZABETH II, 1977

**Government
Publications**

An Act to establish the Ministry of Northern Affairs

THE HON. W. G. DAVIS
Premier

EXPLANATORY NOTE

The Bill establishes the Ministry of Northern Affairs to carry out the functions set out in the Bill.

An Act to establish the Ministry of Northern Affairs

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "Deputy Minister" means the Deputy Minister of Northern Affairs;
- (b) "Minister" means the Minister of Northern Affairs;
- (c) "Ministry" means the Ministry of Northern Affairs.

2. There shall be a ministry of the public service to be known as the Ministry of Northern Affairs.

Ministry
established

3. The Minister shall preside over and have charge of the Ministry.

Minister to
have charge

4. The Minister is responsible for the administration of this Act and any Acts that are assigned to him by the Legislature or by the Lieutenant Governor in Council.

Duties of
Minister

5.—(1) The Lieutenant Governor in Council shall appoint a Deputy Minister of Northern Affairs who shall be deputy head of the Ministry.

Deputy
Minister

(2) Such officers and employees as are required from time to time for the proper conduct of the business of the Ministry may be appointed under *The Public Service Act*.

Staff
R.S.O. 1970,
c. 386

6.—(1) The Lieutenant Governor in Council may authorize a seal for the Ministry.

Seal

(2) The seal may be reproduced by engraving, lithographing, printing or other method of mechanical reproduction

Idem

and when so reproduced has the same effect as if manually affixed.

Delegation
of powers
and duties

7. Where, under this or any other Act, a power or duty is granted to or vested in the Minister, he may in writing, subject to the approval of the Lieutenant Governor in Council, delegate that power or duty to the Deputy Minister, or to any officer or officers of the Ministry, subject to such limitations, restrictions, conditions and requirements as the Minister may set out in his delegation.

Function of
Ministry

8. It is the function of the Ministry to co-ordinate the activities of the Government in Northern Ontario, including,

- (a) developing and recommending Government priorities, policies and plans for Northern Ontario;
- (b) administering Ministry programs and co-ordinating Government programs and services relating to Northern Ontario;
- (c) advising and assisting in the planning and budgeting of other government programs, services and activities in Northern Ontario provided by other ministries;
- (d) promoting and facilitating the accessibility of the residents of Northern Ontario to the programs, services and activities of the Government of Ontario;
- (e) making recommendations regarding priorities for the development of research in all aspects of the social and economic conditions of all areas of Northern Ontario;
- (f) administering such other programs and performing such other duties as are assigned to it by any Act or by the Lieutenant Governor in Council.

Advisory
committees

9. Subject to the approval of the Lieutenant Governor in Council, the Minister may establish advisory committees to the Minister and sub-committees thereto, appoint chairmen and members of such committees and sub-committees, fix the terms of reference of such committees and sub-committees and fix the remuneration and expenses of the chairmen and members of such committees and sub-committees.

Commence-
ment

10. This Act shall be deemed to have come into force on the 1st day of April, 1977.

Short title

11. This Act may be cited as *The Ministry of Northern Affairs Act, 1977*.

An Act to establish the
Ministry of Northern Affairs

1st Reading

April 7th, 1977

2nd Reading

3rd Reading

THE HON. W. G. DAVIS
Premier

(Government Bill)

7-3-4N
B
P. 56

BILL 27

Private Member's Bill

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publication

**An Act to amend
The Employees' Health and Safety Act, 1976**

MR. LAUGHREN

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The purpose of this Bill is to discontinue the use of a collective agreement as a means for obtaining an exemption from the provision allowing an employee to continue to refuse to do work which he has reason to believe is unsafe.

BILL 27

1977

An Act to amend The Employees' Health and Safety Act, 1976

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 2 of section 3 of *The Employees' Health and Safety Act, 1976*, being chapter 79, is repealed and the following substituted therefor: s. 3 (2),
re-enacted

(2) Where the employer or the person having control and direction over the employee disputes the report or takes steps to make the machine, device, thing or place safe or comply with *The Industrial Safety Act, 1971*, *The Construction Safety Act, 1973*, or Part IX of *The Mining Act*, or any regulations thereunder, as the case may be, and the employee has reasonable cause to believe that the machine, device or thing is or continues to be unsafe to use or operate because its use or operation is likely to endanger himself or another employee or the place is or continues to be unsafe for him to work in or the machine, device, thing or place is or continues to be in contravention of *The Industrial Safety Act, 1971*, *The Construction Safety Act, 1973*, or Part IX of *The Mining Act*, or any regulations thereunder, as the case may be, he may continue to refuse to use or operate the machine, device or thing, or work in the place. Employee
may continue
to refuse
to work, etc.
1971, c. 43
1973, c. 47
R.S.O. 1970,
c. 274

- (2) Subsection 3 of the said section 3 is repealed and the following substituted therefor: s. 3 (3),
re-enacted

(3) Where the employee continues to refuse to use or operate the machine, device or thing, or work in the place, the employer or person having control and direction over the employee shall notify an appropriate inspector or an engineer, as the case may be, who shall investigate the matter in the presence of the employer or the person having control and direction over the employee, the employee and, if there is such, either a health and safety representative, a committee Investiga-
tion by
inspector or
engineer

member who represents employees or a person authorized by the trade union that represents the employee.

Commence-
ment

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. This Act may be cited as *The Employees' Health and Safety Amendment Act, 1977*.

An Act to amend
The Employees' Health and
Safety Act, 1976

1st Reading

April 7th, 1977

2nd Reading

3rd Reading

MR. LAUGHREN

(Private Member's Bill)

A2 JV
X13
- B 56

BILL 28

Government Bill

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publication

**An Act to amend The Residential Premises
Rent Review Act, 1975 (2nd Session)**

THE HON. S. B. HANDLEMAN
Minister of Consumer and Commercial Relations

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTES

SECTION 1.—Subsection 1. Section 5 (1) of the Act sets out maximum permitted rent increases between January 1st, 1976 and August 1st, 1976. This subsection has no further application and is being repealed and the replacing subsection provides that, subject to certain exceptions, the maximum permitted rent increase is 8 per cent or such lesser amount as may be prescribed by regulation.

Subsection 2. Section 5 (2) of the Act sets out permitted rent increases between July 31st, 1976 and August 1st, 1977. With the passing of this Bill this subsection will have no further application and is being repealed.

The new subsection 2 makes it an offence for a landlord to increase the rent in respect of a residential premises more than once in any twelve month period and provides that any attempted increase beyond the one permitted is not payable.

Subsection 3. Section 5 (2a) of the Act provided that there be no rent increase within a year of the latest increase except upon the order of a Rent Review Officer. In view of the new section 5 (2) of the Act, this subsection is being repealed.

Subsection 4. Section 5 (3) of the Act presently permits applications by landlords for permission to increase rents beyond the maximum permitted by the Act. The subsection as recast omits reference to dates that no longer apply and changes internal references to reflect the amendments made by this Bill.

An Act to amend The Residential Premises Rent Review Act, 1975 (2nd Session)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 1 of section 5 of *The Residential Premises Rent Review Act, 1975 (2nd Session)*, being chapter 12, is repealed <sup>s. 5 (1),
re-enacted</sup> and the following substituted therefor:

(1) Subject to subsection 2 and except as provided in subsection 3, notwithstanding the terms of any tenancy agreement, no landlord shall charge a tenant for any rental period an amount of rent that, when computed on a monthly basis, exceeds the last rent that was lawfully charged for an equivalent rental period for residential premises by more than 8 per cent or such lesser percentage amount as may be determined by the Lieutenant Governor in Council. <sup>Maximum
permitted
increase
in rent</sup>

- (2) Subsection 2 of the said section 5, as amended by the Statutes of Ontario, 1976, chapter 36, section 2, is repealed <sup>s. 5 (2),
re-enacted</sup> and the following substituted therefor:

(2) Notwithstanding anything in this Act, no landlord shall charge and no order shall authorize an increase in the rent for residential premises to take effect within one year after the effective date of the latest preceding increase in the rent for the premises, and where rent is charged in contravention of this subsection or clause *a* of subsection 2 of section 20, in addition to any other penalty arising therefrom, the tenant is not liable to pay the amount of the increase. <sup>No increase
within a
year</sup>

- (3) Subsection 2*a* of the said section 5, as enacted by the Statutes of Ontario, 1976, chapter 36, section 2, is repealed. <sup>s. 5 (2*a*),
repealed</sup>

- (4) Subsection 3 of the said section 5, as amended by the Statutes of Ontario, 1976, chapter 2, section 2 and 1976, chapter 36, section 2, is repealed and the following substituted therefor: <sup>s. 5 (3),
re-enacted</sup>

Application
by landlord
for increase
in rent

(3) Subject to subsection 2, where a landlord is of the opinion that increased operating costs and capital expenses that he has experienced, or anticipates on reasonable grounds that he will experience in respect of residential premises or the building or project in which they are situate will exceed the increase in rent permitted under subsection 1 and therefore desires an additional increase in the rent for the residential premises for a rental payment period, he may, at least sixty days before the commencement or renewal of the tenancy agreement to which the increase would apply, apply in the form and manner prescribed by the regulations to the Rent Review Officer for the region in which the premises are situate for approval of the rent increase applied for and shall, at the same time, also give a copy of his application for increase to the tenant of the residential premises.

s. 5 (4),
re-enacted

(5) Subsection 4 of the said section 5, as amended by the Statutes of Ontario, 1976, chapter 2, section 2 and 1976, chapter 36, section 2, is repealed and the following substituted therefor:

Application
by tenant
to require
justification
of increase

(4) Subject to subsection 2, where a tenant who has entered into a tenancy agreement granting occupancy or renewal of occupancy of residential premises for any period wishes to dispute the amount of a rent increase, other than a rent increase that has been approved by a Rent Review Officer or the Board, and whether or not such increase is within the limits set out in subsection 1, he may, not later than sixty days after he receives notice of the increase, give notice to the landlord in the form prescribed by the regulations requiring the landlord to apply to the Rent Review Officer for the region in which the premises are situate to justify the increase and shall, at the same time, file a copy of the notice with the Rent Review Officer.

s. 5 (5) (a),
re-enacted

(6) Clause *a* of subsection 5 of the said section 5, as amended by the Statutes of Ontario, 1976, chapter 36, section 2, is repealed and the following substituted therefor:

(a) reduce the rent increase to an amount agreed upon by himself and the tenant, but the amount of the increase shall not exceed the limits set out in subsection 1 or 2; or

.

s. 5 (11),
amended

(7) Subsection 11 of the said section 5 is amended by striking out "within the current rent review period under subsection 1 or 2" in the seventh and eighth lines.

Subsection 5. Section 5 (4) of the Act presently permits a tenant who objects to a rent increase to apply to a Rent Review Officer. The subsection as recast omits reference to dates that no longer apply and changes internal references to reflect the amendments made by this Bill.

Subsection 6. The amendment changes internal references to reflect the amendments made by this Bill.

Subsection 7. The amendment changes internal references to reflect the amendments made by this Bill.

SECTION 2. Section 6 of the Act presently provides that a landlord seeking an increase in rent shall, with the notice of rent increase, supply the tenant with a notice of justification. Instead of a formal notice of justification, the landlord would be permitted to supply written reasons for the increase.

SECTION 3.—Subsection 1. Section 7 (3) of the Act sets out the powers of a Rent Review Officer and provides that he must give a copy of his order together with written reasons to all parties who appeared at the hearing. The provision as amended still requires him to give a copy of his order to all parties who appeared at the hearing, but does not require him to supply copies of the reasons except to those parties who request a copy of the written reasons.

Subsection 2. Section 6 of the Act and section 115 of *The Landlord and Tenant Act* refer to notices to be given of rent increases. The new provision prevents a tenant from raising the issue of insufficiency of notice after the Rent Review Officer makes his order if the tenant did not raise the issue at the hearing.

SECTION 4. The words underlined in section 8 of the Act, as reproduced hereunder, are being added:

8. *Until such time as the Rent Review Officer or Board renders his or its decision, a rent increase up to the limits imposed by subsections 1 and 2 of section 5 may be charged and collected by the landlord.*

There is also a change in internal reference to reflect the amendments made by this Bill.

SECTION 5. Section 9 of the Act provides that a discontinuance of services or privileges is deemed to be an increase in rent. Section 11 of the Act permits an application to the Rent Review Officer for an order for reduction of rent where there has been such a discontinuance.

The amendment clarifies that where there is a discontinuance of services this shall not be considered an increase of rent for the purposes of section 5 (2) of the Act which allows only one increase of rent in any twelve month period. It would still be open to the tenant to apply for a rent reduction under section 11 of the Act.

SECTION 6. The new provision requires a landlord to provide a rental history of premises to a Rent Review Officer where he is so requested in writing.

2. Section 6 of the said Act is repealed and the following substituted therefor: s. 6,
re-enacted

6. At the time of the giving of a notice of rent increase under *The Landlord and Tenant Act*, the landlord seeking the increase shall, at the same time, supply the tenant receiving the same with written reasons for the increase. Notice of reasons for rent increase
R.S.O. 1970,
c. 236

- 3.—(1) Subsection 3 of section 7 of the said Act, as amended by the Statutes of Ontario, 1976, chapter 36, section 3, is further amended by striking out “together with written reasons for his decision to all the parties who appeared on the hearing” in the twenty-third, twenty-fourth and twenty-fifth lines and inserting in lieu thereof “to all the parties to the application who appeared on the hearing together with written reasons therefor if requested by a party”. s. 7 (3),
amended

- (2) The said section 7 is amended by adding thereto the following subsection: s. 7,
amended

(3a) Unless an objection respecting the sufficiency of any notices under subsection 1 of section 115 of *The Landlord and Tenant Act* or under section 6 of this Act is raised by a tenant in proceedings before the Rent Review Officer upon the issuance of the order, the notices so required shall be deemed to have been properly given. Where notice deemed properly given
R.S.O. 1970,
c. 236

4. Section 8 of the said Act, as amended by the Statutes of Ontario, 1976, chapter 36, section 4, is repealed and the following substituted therefor: s. 8,
re-enacted

8. Until such time as the Rent Review Officer or Board renders his or its decision, a rent increase up to the limits imposed by subsections 1 and 2 of section 5 may be charged and collected by the landlord. Rent chargeable pending decision of Rent Review Officer or Board

5. Section 9 of the said Act is amended by adding at the end thereof “except for the purposes of applying subsection 2 of section 5”. s. 9,
amended

6. The said Act is amended by adding thereto the following section: s. 11a,
enacted

11a. The Rent Review Officer in respect of any pending application under this Act may request, in writing, that the landlord furnish him with written particulars as are available to the landlord of rents and rental agreements in effect on or after the 1st day of January, 1974, pertaining to residential premises rented by the landlord and the landlord shall furnish Furnishing information

the Rent Review Officer in writing with the particulars requested.

s. 13,
amended

- 7.—(1) Section 13 of the said Act is amended by adding thereto the following subsection:

Application
for leave to
appeal

(1a) Notwithstanding that a person did not appear at a hearing held by a Rent Review Officer, he may apply in writing to the Board for permission to appeal, and the Board, where the person establishes that he was unable to attend in person or by agent at the hearing as a result of circumstances beyond his control, may in its discretion permit him to appeal upon such terms and conditions as it considers just.

s. 13 (2),
re-enacted

- (2) Subsection 2 of the said section 13 is repealed and the following substituted therefor:

Notice of
appeal

(2) An appeal to the Board shall be by notice in writing in the prescribed form filed with the Board within twenty-one days after the date of the order of the Rent Review Officer and a copy of the notice shall be given,

(a) to the landlord where the appeal is by a tenant; and

(b) to the tenant of each residential premises in respect of which the appeal is brought where the appeal is by a landlord,

not later than seven days after the notice of appeal is filed with the Board.

s. 13 (5),
re-enacted

- (3) Subsection 5 of the said section 13 is repealed and the following substituted therefor:

Decision
final subject
to subs. 7

(5) The decision of the Board under subsection 4 is final and not subject to appeal except where the Board decides to rehear an appeal pursuant to subsection 7.

s. 13 (6),
re-enacted

- (4) Subsection 6 of the said section 13 is repealed and the following substituted therefor:

Application
of s. 7 (4)

(6) Subsection 4 of section 7 applies *mutatis mutandis* to an order or decision of the Board made under subsection 4 or 7 of this section, and if the order or decision of the Board varies an order of the Rent Review Officer or of the Board that has previously been filed under subsection 4 of section 7, or under this subsection, the order previously filed as so varied may be enforced in the same manner as the original order.

SECTION 7.—Subsection 1. Section 13 (1) of the Act provides to a person who appeared at a hearing the right of appeal from a decision of the Rent Review Officer.

The new subsection provides that a person who did not appear at the hearing through circumstances beyond his control may apply to the Board for permission to appeal.

Subsection 2. Section 13 (2) of the Act, as recast, changes the existing subsection so as to relieve a tenant, when appealing to the Board, from giving notice of the appeal to all other parties who were entitled to appear at the original hearing and instead giving notice to the landlord only. The time for filing an appeal with the Board has been extended to twenty-one days from fifteen and the time for giving notice of appeal to the other parties has been reduced from thirty days to seven days. The reduction in time is complementary to the relief given to tenants from serving all parties entitled to appear at the original hearing.

Subsection 3. Section 13 (5) is recast to allow for orders to be made where there is a rehearing of an appeal which rehearing is permitted by the new section 13 (7) of the Act. This is complementary to section 7 (5) of the Bill.

Subsection 4. The amendment is complementary to the new section 13 (7) which is being added by this Bill and refers to filing of the Board's amending order, if any, with the Registrar of the Supreme Court.

Subsection 5. The new provision enables the Board to rehear an appeal where there has been a serious error.

SECTION 8.—Subsection 1. This is a change in an internal reference to reflect the amendments made by this Bill.

Subsection 2. The amendment allows the Lieutenant Governor in Council to make regulations in respect of payment of fees.

SECTION 9. Section 16 of the Act provides for alternate forms of service of notices where the person required to be served is evading service or is absent from his premises. The amendment serves to include a tenant who has abandoned or quit the premises. This is accomplished by adding the words underlined in the subsection reproduced below.

Section 16 (1) as amended will read as follows:

- (1) *Any notice or application required or permitted to be given under this Act,*
- (a) *by a tenant to a landlord, is sufficiently given if delivered personally to the landlord or his agent or sent by ordinary mail addressed to the landlord at the address posted under section 104 of The Landlord and Tenant Act; or*
 - (b) *to a tenant is sufficiently given if delivered personally to the tenant, but, where the notice or application cannot be given by reason of the tenant's absence from his premises or by reason of his evading service, or where the tenant has quit or abandoned the premises, the notice or application may be given,*
 - (i) *by handing it to an apparently adult person on the tenant's premises,*
 - (ii) *by posting it up in a conspicuous place upon some part of the premises, or*
 - (iii) *by sending it by registered mail to the tenant at the address where he resides.*

At the commencement of clause b, the words "by a landlord to a tenant and by a tenant to a tenant" have been replaced by "to a tenant" with no change in meaning.

SECTION 10. Section 17 of the Act presently reads as follows:

17. *Any person who knowingly contravenes section 4, subsection 1, 2 or 2a of section 5, or section 10, is guilty of an offence and on summary conviction is liable to a fine not exceeding \$2,000.*

- (5) The said section 13 is further amended by adding thereto ^{s. 13, amended} the following subsection:

(7) Notwithstanding subsection 5, the Board may, within ^{Board may rehear appeal} 30 days after making an order, decide on its own motion to rehear an appeal where in its opinion there has been a serious error, and at such rehearing, the Board may confirm, rescind, amend or replace any decision or order previously made, and this decision of the Board is final and not subject to appeal.

- 8.—(1) Clause *a* of subsection 1 of section 15 of the said Act is ^{s. 15 (1) (a), amended} amended by striking out “2” in the second line and inserting in lieu thereof “1”.

- (2) Subsection 1 of the said section 15 is amended by adding ^{s. 15 (1), amended} thereto the following clause:

(*aa*) requiring the payment of fees and prescribing the amounts thereof.

9. Clause *b* of subsection 1 of section 16 of the said Act, as ^{s. 16 (1) (b), amended} amended by the Statutes of Ontario, 1976, chapter 36, section 6, exclusive of the subclauses, is repealed and the following substituted therefor:

(*b*) to a tenant is sufficiently given if delivered personally to the tenant, but, where the notice or application cannot be given by reason of the tenant's absence from his premises or by reason of his evading service, or where the tenant has quit or abandoned the premises, the notice or application may be given,

.

10. Section 17 of the said Act, as amended by the Statutes of ^{s. 17, re-enacted} Ontario, 1976, chapter 36, section 7, is repealed and the following substituted therefor:

17.—(1) Every person who, Penalties

- (*a*) contravenes or attempts to contravene section 4, subsection 1 or 2 of section 5, section 10, or clause *a* of subsection 2 of section 20;
- (*b*) refuses to furnish information requested under section 11*a* or refuses to file information as required by subsection 10 of section 5;
- (*c*) knowingly furnishes false information in any application under this Act or regulations or in any state-

ment of particulars or forms required to be furnished or filed under this Act or regulations;

- (d) collects more than the maximum rent chargeable under an order of a Rent Review Officer or the Board; or
- (e) refuses to file an application for rent review when so ordered by a Rent Review Officer under subsection 11 of section 5,

and every director or officer of a corporation who knowingly concurs in such contravention or collection is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000.

Idem

(2) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein.

s. 20,
amended

11.—(1) Section 20 of the said Act is amended by striking out “and is repealed on the 1st day of August, 1977” in the fifth line and inserting in lieu thereof “and is repealed on the 31st day of December, 1978”.

s. 20,
amended

(2) The said section 20 is further amended by adding thereto the following subsection:

Idem

(2) Notwithstanding subsection 1,

- (a) where there has been an increase in rent for residential premises charged to take effect after the 31st day of December, 1977, and on or before the 31st day of December, 1978, the landlord shall not charge and no order shall authorize any further increase in rent for the premises to take effect within twelve months after the said increase took effect and this Act continues in force for the purpose of the implementation and enforcement of this clause; and

(b) this Act continues in force for the purpose of,

- (i) hearing and making orders in respect of applications and appeals filed on or before the 31st day of December, 1978, relating to a rental period commencing on or before that date, and

(ii) enforcing orders made under this Act.

SECTION 11. The expiry date of the Act is being amended from the 1st day of August, 1977 to the 31st day of December, 1978.

The new subsection 2 of section 20 of the Act continues the Act in force beyond the expiry date for certain purposes.

- 12.** This Act comes into force on the day it receives Royal Assent. Commence-
ment
- 13.** This Act may be cited as *The Residential Premises Rent Review* Short title
Amendment Act, 1977.

An Act to amend The Residential Premises
Rent Review Act, 1975 (2nd Session)

1st Reading

April 12th, 1977

2nd Reading

3rd Reading

THE HON. S. B. HANDLEMAN
Minister of Consumer and
Commercial Relations

(Government Bill)

A24W
XB
-B 56

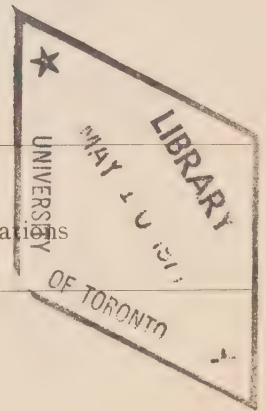
BILL 28

Government Bill

4TH SESSION, 30TH LEGISLATURE, ~~ONTARIO~~
26 ELIZABETH II, 1977

**An Act to amend The Residential Premises
Rent Review Act, 1975 (2nd Session)**

THE HON. S. B. HANDLEMAN
Minister of Consumer and Commercial Relations



(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

SECTION 1.—Subsection 1. Section 5 (1) of the Act sets out maximum permitted rent increases between January 1st, 1976 and August 1st, 1976. This subsection has no further application and is being repealed and the replacing subsection provides that, subject to certain exceptions, the maximum permitted rent increase is the lesser of 8 per cent or the rate of increase for compensation allowed pursuant to the A.I.B. Guidelines or such lesser amount as may be prescribed by regulation.

Subsection 2. Section 5 (2) of the Act sets out permitted rent increases between July 31st, 1976 and August 1st, 1977. With the passing of this Bill this subsection will have no further application and is being repealed.

The new subsection 2 makes it an offence for a landlord to increase the rent in respect of a residential premises more than once in any twelve month period and provides that any attempted increase beyond the one permitted is not payable.

Subsection 3. Section 5 (2a) of the Act provided that there be no rent increase within a year of the latest increase except upon the order of a Rent Review Officer. In view of the new section 5 (2) of the Act, this subsection is being repealed.

BILL 28

1977

An Act to amend The Residential Premises Rent Review Act, 1975 (2nd Session)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 1 of section 5 of *The Residential Premises Rent Review Act, 1975 (2nd Session)*, being chapter 12, is repealed and the following substituted therefor: s. 5 (1),
re-enacted

(1) Subject to subsection 2 and except as provided in subsection 3, notwithstanding the terms of any tenancy agreement, no landlord shall charge a tenant for any rental period an amount of rent that, when computed on a monthly basis, exceeds the last rent that was lawfully charged for an equivalent rental period for residential premises by the lesser of 8 per cent or the rate of increase for compensation allowed under the Basic Protection Factor and National Productivity Factor as outlined in Part 4 of the Anti-Inflation Guidelines or such lesser percentage amount as may be determined by the Lieutenant Governor in Council. Maximum
permitted
increase
in rent

- (2) Subsection 2 of the said section 5, as amended by the Statutes of Ontario, 1976, chapter 36, section 2, is repealed and the following substituted therefor: s. 5 (2),
re-enacted

(2) Notwithstanding anything in this Act, no landlord shall charge and no order shall authorize an increase in the rent for residential premises to take effect within one year after the effective date of the latest preceding increase in the rent for the premises, and where rent is charged in contravention of this subsection or clause *a* of subsection 2 of section 20, in addition to any other penalty arising therefrom, the tenant is not liable to pay the amount of the increase. No increase
within a
year

- (3) Subsection 2*a* of the said section 5, as enacted by the Statutes of Ontario, 1976, chapter 36, section 2, is repealed. s. 5 (2*a*),
repealed

s. 5 (3),
re-enacted

- (4) Subsection 3 of the said section 5, as amended by the Statutes of Ontario, 1976, chapter 2, section 2 and 1976, chapter 36, section 2, is repealed and the following substituted therefor:

Application
by landlord
for increase
in rent

(3) Subject to subsection 2, where a landlord is of the opinion that increased operating costs and capital expenses that he has experienced, or anticipates on reasonable grounds that he will experience in respect of residential premises or the building or project in which they are situate will exceed the increase in rent permitted under subsection 1 and therefore desires an additional increase in the rent for the residential premises for a rental payment period, he may, at least sixty days before the commencement or renewal of the tenancy agreement to which the increase would apply, apply in the form and manner prescribed by the regulations to the Rent Review Officer for the region in which the premises are situate for approval of the rent increase applied for and shall, at the same time, also give a copy of his application for increase to the tenant of the residential premises.

s. 5 (4),
re-enacted

- (5) Subsection 4 of the said section 5, as amended by the Statutes of Ontario, 1976, chapter 2, section 2 and 1976, chapter 36, section 2, is repealed and the following substituted therefor:

Application
by tenant
to require
justification
of increase

(4) Subject to subsection 2, where a tenant who has entered into a tenancy agreement granting occupancy or renewal of occupancy of residential premises for any period wishes to dispute the amount of a rent increase, other than a rent increase that has been approved by a Rent Review Officer or the Board, and whether or not such increase is within the limits set out in subsection 1, he may, not later than sixty days after he receives notice of the increase, give notice to the landlord in the form prescribed by the regulations requiring the landlord to apply to the Rent Review Officer for the region in which the premises are situate to justify the increase and shall, at the same time, file a copy of the notice with the Rent Review Officer.

s. 5 (5) (a),
re-enacted

- (6) Clause *a* of subsection 5 of the said section 5, as amended by the Statutes of Ontario, 1976, chapter 36, section 2, is repealed and the following substituted therefor:

- (a) reduce the rent increase to an amount agreed upon by himself and the tenant, but the amount of the increase shall not exceed the limits set out in subsection 1 or 2; or

.

Subsection 4. Section 5 (3) of the Act presently permits applications by landlords for permission to increase rents beyond the maximum permitted by the Act. The subsection as recast omits reference to dates that no longer apply and changes internal references to reflect the amendments made by this Bill.

Subsection 5. Section 5 (4) of the Act presently permits a tenant who objects to a rent increase to apply to a Rent Review Officer. The subsection as recast omits reference to dates that no longer apply and changes internal references to reflect the amendments made by this Bill.

Subsection 6. The amendment changes internal references to reflect the amendments made by this Bill.

Subsection 7. The amendment changes internal references to reflect the amendments made by this Bill.

SECTION 2. Section 6 of the Act presently provides that a landlord seeking an increase in rent shall, with the notice of rent increase, supply the tenant with a notice of justification. Instead of a formal notice of justification, the landlord would be permitted to supply written reasons for the increase.

SECTION 3. Section 6 of the Act and section 115 of *The Landlord and Tenant Act* refer to notices to be given of rent increases. The new provision obliges the Rent Review Officer to satisfy himself as to notice given.

SECTION 4. The words underlined in section 8 of the Act, as reproduced hereunder, are being added:

8. Until such time as the Rent Review Officer or Board renders his or its decision, a rent increase up to the limits imposed by subsections 1 and 2 of section 5 may be charged and collected by the landlord.

There is also a change in internal reference to reflect the amendments made by this Bill.

SECTION 5. Section 9 of the Act provides that a discontinuance of services or privileges is deemed to be an increase in rent. Section 11 of the Act permits an application to the Rent Review Officer for an order for reduction of rent where there has been such a discontinuance.

The amendment clarifies that where there is a discontinuance of services this shall not be considered an increase of rent for the purposes of section 5 (2) of the Act which allows only one increase of rent in any twelve month period. It would still be open to the tenant to apply for a rent reduction under section 11 of the Act.

SECTION 6. The new provision requires a landlord to provide a rental history of premises to a Rent Review Officer where he is so requested in writing and requires the Rent Review Officer to request a rental history in respect of a building where there is an application for a review of rent in respect of a premises within the building.

(7) Subsection 11 of the said section 5 is amended by striking out "within the current rent review period under subsection 1 or 2" in the seventh and eighth lines. s. 5 (11),
amended

2. Section 6 of the said Act is repealed and the following substituted therefor: s. 6,
re-enacted

6. At the time of the giving of a notice of rent increase under *The Landlord and Tenant Act*, the landlord seeking the increase shall, at the same time, supply the tenant receiving the same with written reasons for the increase. Notice of
reasons for
rent increase
R.S.O. 1970,
c. 236

3. Section 7 of the said Act, as amended by the Statutes of Ontario, 1976, chapter 36, section 3, is further amended by adding thereto the following subsection: s. 7,
amended

(3a) At or prior to the commencement of any hearing, the Rent Review Officer shall satisfy himself about the sufficiency of any notices under subsection 1 of section 115 of *The Landlord and Tenant Act* or under section 6 of this Act and no order of the Rent Review Officer shall be effective unless the notices as required are sufficient. Where notice
deemed
properly
given
R.S.O. 1970,
c. 236

4. Section 8 of the said Act, as amended by the Statutes of Ontario, 1976, chapter 36, section 4, is repealed and the following substituted therefor: s. 8,
re-enacted

8. Until such time as the Rent Review Officer or Board renders his or its decision, a rent increase up to the limits imposed by subsections 1 and 2 of section 5 may be charged and collected by the landlord. Rent
chargeable
pending
decision
of Rent
Review
Officer
or Board

5. Section 9 of the said Act is amended by adding at the end thereof "except for the purposes of applying subsection 2 of section 5". s. 9,
amended

6. The said Act is amended by adding thereto the following section: s. 11a,
enacted

11a. The Rent Review Officer in respect of any pending application under this Act shall request, in writing, that the landlord furnish him with written particulars as are available to the landlord of rents and rental agreements in effect on or after the 1st day of January, 1974, pertaining to residential premises in the building relating to each application and the Furnishing
information

landlord shall furnish the Rent Review Officer in writing with the particulars requested.

s. 13,
amended

- 7.—(1) Section 13 of the said Act is amended by adding thereto the following subsection:

Application
for leave to
appeal

(1a) Notwithstanding that a person did not appear at a hearing held by a Rent Review Officer, he may apply in writing to the Board for permission to appeal, and the Board may in its discretion permit him to appeal upon such terms and conditions as it considers just.

s. 13 (2),
re-enacted

- (2) Subsection 2 of the said section 13 is repealed and the following substituted therefor:

Notice of
appeal

(2) An appeal to the Board shall be by notice in writing in the prescribed form filed with the Board within twenty-one days after the date of the order of the Rent Review Officer and a copy of the notice shall be given,

(a) to the landlord where the appeal is by a tenant; and

(b) to the tenant of each residential premises in respect of which the appeal is brought where the appeal is by a landlord,

not later than seven days after the notice of appeal is filed with the Board.

s. 13 (5),
re-enacted

- (3) Subsection 5 of the said section 13 is repealed and the following substituted therefor:

Decision
final subject
to subs. 7

(5) The decision of the Board under subsection 4 is final and not subject to appeal except where the Board decides to rehear an appeal pursuant to subsection 7.

s. 13 (6),
re-enacted

- (4) Subsection 6 of the said section 13 is repealed and the following substituted therefor:

Application
of s. 7 (4)

(6) Subsection 4 of section 7 applies *mutatis mutandis* to an order or decision of the Board made under subsection 4 or 7 of this section, and if the order or decision of the Board varies an order of the Rent Review Officer or of the Board that has previously been filed under subsection 4 of section 7, or under this subsection, the order previously filed as so varied may be enforced in the same manner as the original order.

SECTION 7.—Subsection 1. Section 13 (1) of the Act provides to a person who appeared at a hearing the right of appeal from a decision of the Rent Review Officer.



The new subsection provides that a person who did not appear at the hearing may apply to the Board for permission to appeal.



Subsection 2. Section 13 (2) of the Act, as recast, changes the existing subsection so as to relieve a tenant, when appealing to the Board, from giving notice of the appeal to all other parties who were entitled to appear at the original hearing and instead giving notice to the landlord only. The time for filing an appeal with the Board has been extended to twenty-one days from fifteen and the time for giving notice of appeal to the other parties has been reduced from thirty days to seven days. The reduction in time is complementary to the relief given to tenants from serving all parties entitled to appear at the original hearing.

Subsection 3. Section 13 (5) is recast to allow for orders to be made where there is a rehearing of an appeal which rehearing is permitted by the new section 13 (7) of the Act. This is complementary to section 7 (5) of the Bill.

Subsection 4. The amendment is complementary to the new section 13 (7) which is being added by this Bill and refers to filing of the Board's amending order, if any, with the Registrar of the Supreme Court.

Subsection 5. The new provision enables the Board to rehear an appeal where there has been a serious error.

SECTION 8.—Subsection 1. This is a change in an internal reference to reflect the amendments made by this Bill.

Subsection 2. The amendment allows the Lieutenant Governor in Council to make regulations in respect of payment of fees.

SECTION 9. Section 16 of the Act provides for alternate forms of service of notices where the person required to be served is evading service or is absent from his premises. The amendment serves to include a tenant who has abandoned or quit the premises. This is accomplished by adding the words underlined in the subsection reproduced below.

Section 16 (1) as amended will read as follows:

(1) Any notice or application required or permitted to be given under this Act,

(a) by a tenant to a landlord, is sufficiently given if delivered personally to the landlord or his agent or sent by ordinary mail addressed to the landlord at the address posted under section 104 of The Landlord and Tenant Act; or

(b) to a tenant is sufficiently given if delivered personally to the tenant, but, where the notice or application cannot be given by reason of the tenant's absence from his premises or by reason of his evading service, or where the tenant has apparently abandoned the premises, the notice or application may be given,

(i) by handing it to an apparently adult person on the tenant's premises,

(ii) by posting it up in a conspicuous place upon some part of the premises, or

(iii) by sending it by registered mail to the tenant at the address where he resides.

At the commencement of clause b, the words "by a landlord to a tenant and by a tenant to a tenant" have been replaced by "to a tenant" with no change in meaning.

SECTION 10. Section 17 of the Act presently reads as follows:

17. Any person who knowingly contravenes section 4, subsection 1, 2 or 2a of section 5, or section 10, is guilty of an offence and on summary conviction is liable to a fine not exceeding \$2,000.

- (5) The said section 13 is further amended by adding thereto ^{s. 13,}
the following subsection: ^{amended}

(7) Notwithstanding subsection 5, the Board may, within ^{Board}
30 days after making an order, decide on its own motion to ^{may rehear}
rehear an appeal where in its opinion there has been a serious ^{appeal}
error, and at such rehearing, the Board may confirm, rescind,
amend or replace any decision or order previously made, and
this decision of the Board is final and not subject to appeal.

- 8.—(1) Clause *a* of subsection 1 of section 15 of the said Act is ^{s. 15 (1) (a),}
amended by striking out “2” in the second line and insert- ^{amended}
ing in lieu thereof “1”.

- (2) Subsection 1 of the said section 15 is amended by adding ^{s. 15 (1),}
thereto the following clause: ^{amended}

(*aa*) requiring the payment of fees and prescribing the
amounts thereof.

9. Clause *b* of subsection 1 of section 16 of the said Act, as ^{s. 16 (1) (b),}
amended by the Statutes of Ontario, 1976, chapter 36, sec- ^{amended}
tion 6, exclusive of the subclauses, is repealed and the following
substituted therefor:

(*b*) to a tenant is sufficiently given if delivered personally
to the tenant, but, where the notice or application
cannot be given by reason of the tenant's absence
from his premises or by reason of his evading service,
or where the tenant has apparently abandoned the
premises, the notice or application may be given,

.

10. Section 17 of the said Act, as amended by the Statutes of ^{s. 17,}
Ontario, 1976, chapter 36, section 7, is repealed and the follow- ^{re-enacted}
ing substituted therefor:

17.—(1) Every person who,

Penalties

- (*a*) contravenes or attempts to contravene section 4,
subsection 1 or 2 of section 5, section 10, or clause *a*
of subsection 2 of section 20;
- (*b*) refuses to furnish information requested under sec-
tion 11*a* or refuses to file information as required by
subsection 10 of section 5;
- (*c*) knowingly furnishes false information in any applica-
tion under this Act or regulations or in any state-

ment of particulars or forms required to be furnished or filed under this Act or regulations;

- (d) collects more than the maximum rent chargeable under an order of a Rent Review Officer or the Board; or
- (e) refuses to file an application for rent review when so ordered by a Rent Review Officer under subsection 11 of section 5,

and every director or officer of a corporation who knowingly concurs in such contravention or collection is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000.

Idem

(2) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein.

s. 20,
amended

11.—(1) Section 20 of the said Act is amended by striking out “and is repealed on the 1st day of August, 1977” in the fifth line and inserting in lieu thereof “and is repealed on the 31st day of December, 1978”.

s. 20,
amended

(2) The said section 20 is further amended by adding thereto the following subsection:

Idem

(2) Notwithstanding subsection 1,

(a) where there has been an increase in rent for residential premises charged to take effect after the 31st day of December, 1977, and on or before the 31st day of December, 1978, the landlord shall not charge and no order shall authorize any further increase in rent for the premises to take effect within twelve months after the said increase took effect and this Act continues in force for the purpose of the implementation and enforcement of this clause; and

(b) this Act continues in force for the purpose of,

(i) hearing and making orders in respect of applications and appeals filed on or before the 31st day of December, 1978, relating to a rental period commencing on or before that date, and

(ii) enforcing orders made under this Act.

SECTION 11. The expiry date of the Act is being amended from the 1st day of August, 1977 to the 31st day of December, 1978.

The new subsection 2 of section 20 of the Act continues the Act in force beyond the expiry date for certain purposes.

- 12.** This Act comes into force on the day it receives Royal Assent. Commence-
ment
- 13.** This Act may be cited as *The Residential Premises Rent Review* Short title
Amendment Act, 1977.

An Act to amend The Residential Premises
Rent Review Act, 1975 (2nd Session)

1st Reading

April 12th, 1977

2nd Reading

April 26th, 1977

3rd Reading

THE HON. S. B. HANDLEMAN
Minister of Consumer and
Commercial Relations

*(Reprinted as amended by the
Committee of the Whole House)*

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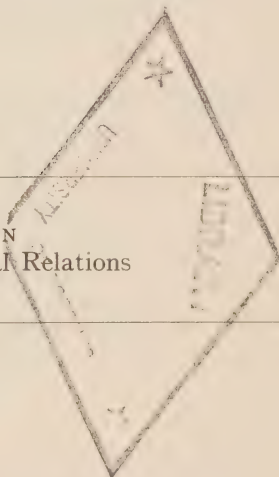
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4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publications

An Act to amend The Residential Premises Rent Review Act, 1975 (2nd Session)

THE HON. S. B. HANDLEMAN
Minister of Consumer and Commercial Relations



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

An Act to amend The Residential Premises Rent Review Act, 1975 (2nd Session)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 1 of section 5 of *The Residential Premises Rent Review Act, 1975 (2nd Session)*, being chapter 12, is repealed ^{s. 5 (1), re-enacted} and the following substituted therefor:

(1) Subject to subsection 2 and except as provided in subsection 3, notwithstanding the terms of any tenancy agreement, no landlord shall charge a tenant for any rental period an amount of rent that, when computed on a monthly basis, exceeds the last rent that was lawfully charged for an equivalent rental period for residential premises by the lesser of 8 per cent or the rate of increase for compensation allowed under the Basic Protection Factor and National Productivity Factor as outlined in Part 4 of the Anti-Inflation Guidelines or such lesser percentage amount as may be determined by the Lieutenant Governor in Council. ^{Maximum permitted increase in rent}

- (2) Subsection 2 of the said section 5, as amended by the Statutes of Ontario, 1976, chapter 36, section 2, is repealed ^{s. 5 (2), re-enacted} and the following substituted therefor:

(2) Notwithstanding anything in this Act, no landlord shall charge and no order shall authorize an increase in the rent for residential premises to take effect within one year after the effective date of the latest preceding increase in the rent for the premises, and where rent is charged in contravention of this subsection or clause *a* of subsection 2 of section 20, in addition to any other penalty arising therefrom, the tenant is not liable to pay the amount of the increase. ^{No increase within a year}

- (3) Subsection 2*a* of the said section 5, as enacted by the Statutes of Ontario, 1976, chapter 36, section 2, is repealed. ^{s. 5 (2*a*), repealed}

s. 5 (3),
re-enacted

- (4) Subsection 3 of the said section 5, as amended by the Statutes of Ontario, 1976, chapter 2, section 2 and 1976, chapter 36, section 2, is repealed and the following substituted therefor:

Application
by landlord
for increase
in rent

(3) Subject to subsection 2, where a landlord is of the opinion that increased operating costs and capital expenses that he has experienced, or anticipates on reasonable grounds that he will experience in respect of residential premises or the building or project in which they are situate will exceed the increase in rent permitted under subsection 1 and therefore desires an additional increase in the rent for the residential premises for a rental payment period, he may, at least sixty days before the commencement or renewal of the tenancy agreement to which the increase would apply, apply in the form and manner prescribed by the regulations to the Rent Review Officer for the region in which the premises are situate for approval of the rent increase applied for and shall, at the same time, also give a copy of his application for increase to the tenant of the residential premises.

s. 5 (4),
re-enacted

- (5) Subsection 4 of the said section 5, as amended by the Statutes of Ontario, 1976, chapter 2, section 2 and 1976, chapter 36, section 2, is repealed and the following substituted therefor:

Application
by tenant
to require
justification
of increase

(4) Subject to subsection 2, where a tenant who has entered into a tenancy agreement granting occupancy or renewal of occupancy of residential premises for any period wishes to dispute the amount of a rent increase, other than a rent increase that has been approved by a Rent Review Officer or the Board, and whether or not such increase is within the limits set out in subsection 1, he may, not later than sixty days after he receives notice of the increase, give notice to the landlord in the form prescribed by the regulations requiring the landlord to apply to the Rent Review Officer for the region in which the premises are situate to justify the increase and shall, at the same time, file a copy of the notice with the Rent Review Officer.

s. 5 (5) (a),
re-enacted

- (6) Clause *a* of subsection 5 of the said section 5, as amended by the Statutes of Ontario, 1976, chapter 36, section 2, is repealed and the following substituted therefor:

(a) reduce the rent increase to an amount agreed upon by himself and the tenant, but the amount of the increase shall not exceed the limits set out in subsection 1 or 2; or

- (7) Subsection 11 of the said section 5 is amended by striking out "within the current rent review period under subsection 1 or 2" in the seventh and eighth lines. s. 5 (11), amended
2. Section 6 of the said Act is repealed and the following substituted therefor: s. 6, re-enacted
6. At the time of the giving of a notice of rent increase under *The Landlord and Tenant Act*, the landlord seeking the increase shall, at the same time, supply the tenant receiving the same with written reasons for the increase. Notice of reasons for rent increase R.S.O. 1970, c. 236
3. Section 7 of the said Act, as amended by the Statutes of Ontario, 1976, chapter 36, section 3, is further amended by adding thereto the following subsection: s. 7, amended
- (3a) At or prior to the commencement of any hearing, the Rent Review Officer shall satisfy himself about the sufficiency of any notices under subsection 1 of section 115 of *The Landlord and Tenant Act* or under section 6 of this Act and no order of the Rent Review Officer shall be effective unless the notices as required are sufficient. Where notice deemed properly given R.S.O. 1970, c. 236
4. Section 8 of the said Act, as amended by the Statutes of Ontario, 1976, chapter 36, section 4, is repealed and the following substituted therefor: s. 8, re-enacted
8. Until such time as the Rent Review Officer or Board renders his or its decision, a rent increase up to the limits imposed by subsections 1 and 2 of section 5 may be charged and collected by the landlord. Rent chargeable pending decision of Rent Review Officer or Board
5. Section 9 of the said Act is amended by adding at the end thereof "except for the purposes of applying subsection 2 of section 5". s. 9, amended
6. The said Act is amended by adding thereto the following section: s. 11a, enacted
- 11a. The Rent Review Officer in respect of any pending application under this Act shall request, in writing, that the landlord furnish him with written particulars as are available to the landlord of rents and rental agreements in effect on or after the 1st day of January, 1974, pertaining to residential premises in the building relating to each application and the Furnishing information

landlord shall furnish the Rent Review Officer in writing with the particulars requested.

s. 13,
amended

- 7.—(1) Section 13 of the said Act is amended by adding thereto the following subsection:

Application
for leave to
appeal

(1a) Notwithstanding that a person did not appear at a hearing held by a Rent Review Officer, he may apply in writing to the Board for permission to appeal, and the Board may in its discretion permit him to appeal upon such terms and conditions as it considers just.

s. 13 (2),
re-enacted

- (2) Subsection 2 of the said section 13 is repealed and the following substituted therefor:

Notice of
appeal

(2) An appeal to the Board shall be by notice in writing in the prescribed form filed with the Board within twenty-one days after the date of the order of the Rent Review Officer and a copy of the notice shall be given,

(a) to the landlord where the appeal is by a tenant; and

(b) to the tenant of each residential premises in respect of which the appeal is brought where the appeal is by a landlord,

not later than seven days after the notice of appeal is filed with the Board.

s. 13 (5),
re-enacted

- (3) Subsection 5 of the said section 13 is repealed and the following substituted therefor:

Decision
final subject
to subs. 7

(5) The decision of the Board under subsection 4 is final and not subject to appeal except where the Board decides to rehear an appeal pursuant to subsection 7.

s. 13 (6),
re-enacted

- (4) Subsection 6 of the said section 13 is repealed and the following substituted therefor:

Application
of s. 7 (4)

(6) Subsection 4 of section 7 applies *mutatis mutandis* to an order or decision of the Board made under subsection 4 or 7 of this section, and if the order or decision of the Board varies an order of the Rent Review Officer or of the Board that has previously been filed under subsection 4 of section 7, or under this subsection, the order previously filed as so varied may be enforced in the same manner as the original order.

- (5) The said section 13 is further amended by adding thereto ^{s. 13, amended} the following subsection:

(7) Notwithstanding subsection 5, the Board may, within ^{Board may rehear appeal} 30 days after making an order, decide on its own motion to rehear an appeal where in its opinion there has been a serious error, and at such rehearing, the Board may confirm, rescind, amend or replace any decision or order previously made, and this decision of the Board is final and not subject to appeal.

- 8.—(1) Clause *a* of subsection 1 of section 15 of the said Act is ^{s. 15 (1) (a), amended} amended by striking out “2” in the second line and inserting in lieu thereof “1”.

- (2) Subsection 1 of the said section 15 is amended by adding ^{s. 15 (1), amended} thereto the following clause:

(aa) requiring the payment of fees and prescribing the amounts thereof.

9. Clause *b* of subsection 1 of section 16 of the said Act, as ^{s. 16 (1) (b), amended} amended by the Statutes of Ontario, 1976, chapter 36, section 6, exclusive of the subclauses, is repealed and the following substituted therefor:

(b) to a tenant is sufficiently given if delivered personally to the tenant, but, where the notice or application cannot be given by reason of the tenant's absence from his premises or by reason of his evading service, or where the tenant has apparently abandoned the premises, the notice or application may be given,

.

10. Section 17 of the said Act, as amended by the Statutes of ^{s. 17, re-enacted} Ontario, 1976, chapter 36, section 7, is repealed and the following substituted therefor:

17.—(1) Every person who, Penalties

- (a) contravenes or attempts to contravene section 4, subsection 1 or 2 of section 5, section 10, or clause *a* of subsection 2 of section 20;
- (b) refuses to furnish information requested under section 11*a* or refuses to file information as required by subsection 10 of section 5;
- (c) knowingly furnishes false information in any application under this Act or regulations or in any state-

ment of particulars or forms required to be furnished or filed under this Act or regulations;

(d) collects more than the maximum rent chargeable under an order of a Rent Review Officer or the Board; or

(e) refuses to file an application for rent review when so ordered by a Rent Review Officer under subsection 11 of section 5,

and every director or officer of a corporation who knowingly concurs in such contravention or collection is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000.

Idem

(2) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein.

s. 20,
amended

11.—(1) Section 20 of the said Act is amended by striking out “and is repealed on the 1st day of August, 1977” in the fifth line and inserting in lieu thereof “and is repealed on the 31st day of December, 1978”.

s. 20,
amended

(2) The said section 20 is further amended by adding thereto the following subsection:

Idem

(2) Notwithstanding subsection 1,

(a) where there has been an increase in rent for residential premises charged to take effect after the 31st day of December, 1977, and on or before the 31st day of December, 1978, the landlord shall not charge and no order shall authorize any further increase in rent for the premises to take effect within twelve months after the said increase took effect and this Act continues in force for the purpose of the implementation and enforcement of this clause; and

(b) this Act continues in force for the purpose of,

(i) hearing and making orders in respect of applications and appeals filed on or before the 31st day of December, 1978, relating to a rental period commencing on or before that date, and

(ii) enforcing orders made under this Act.

- 12.** This Act comes into force on the day it receives Royal Assent. Commence-
ment
- 13.** This Act may be cited as *The Residential Premises Rent Review* Short title
Amendment Act, 1977.

An Act to amend The Residential Premises
Rent Review Act, 1975 (2nd Session)

1st Reading

April 12th, 1977

2nd Reading

April 26th, 1977

3rd Reading

April 29th, 1977

THE HON. S. B. HANDLEMAN
Minister of Consumer and
Commercial Relations

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BILL 29

Government Bill

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

C.
Public

**An Act to provide for successor Rights on the Transfer
of an Undertaking to or from the Crown**

THE HON. J. A. C. AULD
Chairman, Management Board of Cabinet

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The Bill preserves the representation and bargaining rights of organizations representing employees employed in undertakings transferred from the Crown to other employers and in undertakings transferred from other employers to the Crown.

The Bill provides for the determination of questions that may arise on such a transfer. Where the transfer is to an employer other than the Crown, the determinations are to be made by the Ontario Labour Relations Board. Where the transfer is to the Crown, the determinations are to be made by the Ontario Public Service Labour Relations Tribunal. Where a trade union or council of trade unions is the certified bargaining agent in respect of an undertaking transferred to the Crown, the trade union or council of trade unions is required to qualify as an employee organization within the meaning of *The Crown Employees Collective Bargaining Act, 1972* and where an employee organization has representation rights in respect of an undertaking transferred from the Crown to another employer, the employee organization is required to qualify as a trade union or council of trade unions under *The Labour Relations Act*.

An Act to provide for successor Rights on the Transfer of an Undertaking to or from the Crown

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-
tation

- (a) “bargaining agent” means an employee organization that has representation rights under *The Crown Employees Collective Bargaining Act, 1972* ^{1972, c. 67} or a trade union or council of trade unions that is certified as a bargaining agent under *The Labour Relations Act* ^{R.S.O. 1970, c. 232};
- (b) “Board” means the Ontario Labour Relations Board;
- (c) “collective agreement” means an agreement in writing between the Crown or an employer and an employee organization, trade union or council of trade unions covering terms and conditions of employment;
- (d) “Crown” means Her Majesty in right of Ontario;
- (e) “employer” means an employer other than the Crown;
- (f) “transfer” means a conveyance, disposition or sale;
- (g) “Tribunal” means the Ontario Public Service Labour Relations Tribunal;
- (h) “undertaking” means a business, enterprise, institution, program, project, work or a part of any of them.

Idem (2) For the purposes of an application or other proceeding before the Tribunal under this Act, "employee" has the same meaning as in *The Crown Employees Collective Bargaining Act, 1972*.

1972, c. 67

Where
collective
agreement
binding on
employer

2.—(1) Where an undertaking is transferred from the Crown to an employer and a bargaining agent has a collective agreement with the Crown in respect of employees employed in the undertaking, the employer is bound by the collective agreement as if a party to the collective agreement until the Board declares otherwise.

Where
application
before
Tribunal

(2) Where an undertaking is transferred from the Crown to an employer while an application is before the Tribunal for representation rights in respect of employees employed in the undertaking or for a declaration that an employee organization no longer represents employees employed in the undertaking, the application shall be transferred to the Board and the employer is the employer for the purposes of the application as if named as the employer in the application until the Board declares otherwise.

Rights of
bargaining
agent

(3) Where an undertaking is transferred from the Crown to an employer and a bargaining agent has been granted representation rights under any Act and has given or is entitled to give written notice of desire to bargain to make or renew a collective agreement in respect of employees employed in the undertaking, the bargaining agent continues, until the Board declares otherwise, to be the bargaining agent in respect of the employees and is entitled to give to the employer written notice of desire to bargain to make or renew, with or without modifications, a collective agreement, as the case requires.

Where
collective
agreement
binding
on Crown

3.—(1) Where an undertaking is transferred from an employer to the Crown and a bargaining agent has a collective agreement with the employer in respect of employees employed in the undertaking, the Crown is bound by the collective agreement as if a party to the collective agreement until the Tribunal declares otherwise.

Where
application
before Board

(2) Where an undertaking is transferred from an employer to the Crown while an application is before the Board for certification or termination of bargaining rights in respect of employees employed in the undertaking, the application shall be transferred to the Tribunal and the Crown is the employer for the purposes of the application as if named as the employer in the application until the Tribunal declares otherwise.

(3) Where an undertaking is transferred from an employer to the Crown and a trade union or council of trade unions has been certified by the Board as bargaining agent or has given or is entitled to give written notice of desire to bargain to make or renew a collective agreement in respect of employees employed in the undertaking, the bargaining agent continues, until the Tribunal declares otherwise, to be the bargaining agent in respect of the employees and is entitled to give to the body representing the Crown or to the Crown, as the case requires, written notice of desire to bargain to make or renew, with or without modifications, a collective agreement, as the case requires.

Rights of
bargaining
agent

4.—(1) Where an undertaking was transferred from the Crown to an employer or from an employer to the Crown and an employee organization, trade union or council of trade unions was the bargaining agent in respect of employees employed in the undertaking immediately before the transfer and,

Powers of
Board and
Tribunal

- (a) a question arises as to what constitutes a unit of employees that is appropriate for collective bargaining purposes in respect of the undertaking; or
- (b) any person, employee organization, trade union or council of trade unions claims that by virtue of section 2 or 3, a conflict exists as to the bargaining rights of the employee organization, trade union or council of trade unions,

any person, employee organization, trade union or council of trade unions concerned may apply to the Board, in the case of the transfer of the undertaking to an employer, or to the Tribunal, in the case of the transfer of the undertaking to the Crown, and the Board or the Tribunal, as the case requires,

- (c) may determine the composition of the unit of employees referred to in clause a;
- (d) may amend, to such extent as the Tribunal or the Board considers necessary,
 - (i) any bargaining unit in any certificate issued to any trade union or council of trade unions,
 - (ii) any bargaining unit defined in any collective agreement,

- (iii) any unit of employees determined by the Tribunal to be appropriate for collective bargaining purposes in respect of the undertaking, or
- (iv) any unit of employees that is designated by the Lieutenant Governor in Council as an appropriate bargaining unit for collective bargaining purposes in respect of the undertaking.

Idem

(2) Where an undertaking is transferred from the Crown to an employer or from an employer to the Crown, any person, employee organization, trade union or council of trade unions may apply to the Board, in the case of the transfer of the undertaking to an employer, or to the Tribunal, in the case of the transfer of the undertaking to the Crown,

- (a) within sixty days after the transfer of the undertaking; or
- (b) within sixty days after written notice is given by the employee organization, trade union or council of trade unions of desire to bargain to make or renew, with or without modifications, a collective agreement,

and the Board or the Tribunal, as the case requires, may terminate the bargaining rights of the employee organization, trade union or council of trade unions bound by a collective agreement in respect of employees employed in the undertaking or that has given notice, as the case may be, if in the opinion of the Board or the Tribunal, the transferee of the undertaking has changed the character of the undertaking so that it is substantially different from the undertaking as it was carried on immediately before the transfer.

Where
employees
intermingled

5.—(1) Notwithstanding section 2, where an undertaking is transferred from the Crown to an employer who intermingles the employees employed in the undertaking immediately before the transfer with employees employed in one or more other undertakings carried on by the employer or an undertaking is transferred from an employer to the Crown and employees employed in the undertaking immediately before the transfer are intermingled with employees employed in other undertakings of the Crown and an employee organization, trade union or council of trade unions that is the bargaining agent in respect of employees

employed in any of the undertakings applies to the Board, in the case of the transfer of the undertaking to an employer, or to the Tribunal, in the case of the transfer of the undertaking to the Crown, the Board or the Tribunal, as the case requires,

- (a) may declare that the employer or the Crown, as the case may be, is no longer bound by the collective agreement referred to in section 2 or 3;
- (b) may determine whether the employees concerned constitute one or more appropriate bargaining units;
- (c) may declare which employee organization, trade union or council of trade unions shall be the bargaining agent in respect of each such bargaining unit; and
- (d) may amend, to such extent as the Board or the Tribunal considers necessary,
 - (i) any certificate issued to any trade union or council of trade unions,
 - (ii) any bargaining unit defined in any collective agreement,
 - (iii) any unit of employees determined by the Tribunal to be appropriate for collective bargaining purposes in respect of any of the undertakings, or
 - (iv) any unit of employees that is designated by the Lieutenant Governor in Council as an appropriate bargaining unit for collective bargaining purposes in respect of any of the undertakings.

(2) Where an employee organization, trade union or council of trade unions is declared to be a bargaining agent under subsection 1 and it is not already bound by a collective agreement with the successor employer in respect of employees employed in the undertaking that was transferred, the employee organization, trade union or council of trade unions is entitled to give to the successor employer written notice of desire to bargain to make or renew, with or without modifications, a collective agreement.

- 6.**—(1) Notwithstanding any other provision of this Act,
- (a) a trade union or council of trade unions shall not exercise representation rights or act as bargaining agent

Where bargaining agent ascertained

Compliance with requirements for bargaining agent

1972, c. 67,

agent in respect of employees employed in an undertaking transferred from an employer to the Crown unless the trade union or council of trade unions qualifies as an employee organization under *The Crown Employees Collective Bargaining Act, 1972*; and

R.S.O. 1970,
c. 232

- (b) an employee organization shall not exercise representation rights or act as bargaining agent in respect of employees employed in an undertaking transferred from the Crown to an employer unless the employee organization qualifies as a trade union or council of trade unions under *The Labour Relations Act*.

Application
of
R.S.O. 1970,
c. 232;
1972, c. 67

(2) Except as otherwise provided in this Act, where an undertaking is transferred from the Crown to an employer, *The Labour Relations Act* applies to a bargaining agent that has representation rights in respect of the employees employed in the undertaking and to the employees and where an undertaking is transferred from an employer to the Crown, *The Crown Employees Collective Bargaining Act, 1972* applies to a bargaining agent that is certified as a bargaining agent in respect of the employees employed in the undertaking and to the employees.

Powers of
Board or
Tribunal
before
disposing of
application

7. Before disposing of an application under this Act, the Board or the Tribunal, as the case may be, may require the production of such evidence and the doing of such things, or may hold such representation votes, as it considers appropriate.

Where Crown
or employer
not
required to
bargain

8. Where an application is made under this Act, the Crown or the employer, as the case may be, is not required, notwithstanding that a notice has been given by an employee organization, trade union or council of trade unions to bargain with the employee organization, trade union or council of trade unions, as the case may be, concerning the employees to whom the application relates until the Board or the Tribunal, as the case requires, has disposed of the application and has declared which employee organization, trade union or council of trade unions, if any, has the right to bargain with the Crown or the employer, as the case may be, on behalf of the employees concerned in the application.

Effect of
notice or
declaration

9. For the purposes of *The Crown Employees Collective Bargaining Act, 1972* and *The Labour Relations Act*, notice given under this Act of desire to bargain, to make or renew, with or without modifications, a collective agreement or a

declaration by the Board or the Tribunal that an employee organization, trade union or council of trade unions is the bargaining agent in respect of the employees in a bargaining unit has the same effect as the granting of representation rights or certification as bargaining agent.

10.—(1) Where, on an application before the Board under this Act, a question arises as to whether an undertaking has been transferred from the Crown to an employer, the Board shall determine the question and its decision is final and conclusive for the purposes of this Act. Power to determine whether transfer

(2) Where, on an application before the Tribunal under this Act, a question arises as to whether an undertaking has been transferred from an employer to the Crown, the Tribunal shall determine the question and its decision is final and conclusive for the purposes of this Act. Idem

(3) Where, on an application under this Act, an employee organization, trade union or council of trade unions alleges that an undertaking was transferred from the Crown to an employer or from an employer to the Crown, the respondents to the application shall adduce at the hearing all facts within their knowledge that are material to the allegation. Duty of respondent

11. This Act shall be deemed to have come into force on the 31st day of March, 1977. Commencement

12. This Act may be cited as *The Successor Rights (Crown Transfers) Act, 1977*. Short title

An Act to provide for successor Rights on
the Transfer of an Undertaking to or from
the Crown

1st Reading

April 12th, 1977

2nd Reading

3rd Reading

THE HON. J. A. C. AULD
Chairman, Management Board
of Cabinet

(*Government Bill*)

M24N
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-P 50

BILL 30

Private Member's Bill

4TH SESSION, 30TH LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

*Government
Publication*

An Act to amend The Municipal Elections Act, 1972

MR. SMITH (Hamilton West)

TORONTO

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EXPLANATORY NOTES

The Bill removes the property qualification which creates a distinction between those persons in a municipality who are qualified to vote for municipal representatives and those who are qualified to vote on money by-laws.

SECTION 1. Section 15, as re-enacted, would provide that all persons who are entitled to vote for municipal representatives may also vote in respect of money by-laws.

SECTION 2. The amendment removes a provision that permits a corporation to nominate a person to exercise its vote on a money by-law where the corporation satisfies the property qualification.

BILL 30

1977

**An Act to amend
The Municipal Elections Act, 1972**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 15 of *The Municipal Elections Act, 1972*, being ^{s. 15, re-enacted} chapter 95, as amended by the Statutes of Ontario, 1974, chapter 32, section 6, is repealed and the following substituted therefor:

15. Every person entitled to be an elector in a municipality under sections 12 and 13 is entitled to be an elector ^{All electors may vote on money by-laws} to vote on a money by-law.

- 2.—(1) Subsections 1 and 2 of section 16 of the said Act are ^{s. 16 (1, 2), repealed} repealed.

(2) Subsection 3 of section 16 of the said Act, as re-enacted ^{s. 16 (3), repealed} by the Statutes of Ontario, 1974, chapter 32, section 7, is repealed.

3. This Act comes into force on the day it receives Royal Assent. ^{Commencement}

4. This Act may be cited as *The Municipal Elections Amendment Act, 1977*. ^{Short title}

An Act to amend
The Municipal Elections Act, 1972

1st Reading

April 12th, 1977

2nd Reading

3rd Reading

MR. SMITH (Hamilton West)

(Private Member's Bill)



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